

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
PECOS DIVISION

UNITED STATES OF AMERICA,	)	Case No. 4:20-CR-000388-DC
	)	
Plaintiff,	)	Appeal No. 22-50987
	)	
vs.	)	
	)	
THOMAS SCOTT PERKINS,	)	
	)	
Defendant.	)	Monday, July 18, 2022
_____	)	9:50 A.M.

TRANSCRIPT OF JURY TRIAL, DAY 1  
**BEFORE THE HONORABLE DAVID C. COUNTS**  
**UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiff: United States Attorney's Office  
BY: SCOTT GREENBAUM, ESQUIRE  
KEVIN CAYTON, ESQUIRE  
2500 North Highway 118, Suite 200  
Alpine, Texas 79830

For the Defendant: Office of the Federal Public Defender  
BY: ELYSE BATALLER-SCHNEIDER, ESQUIRE  
MICHAEL F. GORMAN, ESQUIRE  
700 East San Antonio, Suite D401  
El Paso, Texas 79901

Deputy Clerk: Cristina Lerma  
United States District Court  
410 South Cedar Street  
Pecos, Texas 79772

Transcription Service By: Dipti Patel, CET-997  
Liberty Transcripts  
7306 Danwood Drive  
Austin, Texas 78759  
(847) 848-4907  
www.libertytranscripts.com

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

INDEX

	<u>PAGE</u>
Case called	4
Preliminary Jury Instructions	5
Opening Statements	
By: Mr. Cayton	16
By: Mr. Greenbaum	18
End of Proceedings	228
Certificate of Transcriber	228

WITNESSESFOR THE GOVERNMENT:

Andrew Bonneau	
Direct Examination by Mr. Cayton	22
Cross-Examination by Mr. Gorman	29
Redirect Examination by Mr. Cayton	37
Recross-Examination by Mr. Gorman	41
David Ferg	
Direct Examination by Mr. Cayton	62
Cross-Examination by Ms. Bataller-Schneider	118
Redirect Examination by Mr. Cayton	125
David Barkley	
Direct Examination by Mr. Greenbaum	128
Michelle Wilson	
Direct Examination by Mr. Greenbaum	154
Cross-Examination by Ms. Bataller-Schneider	166
Redirect Examination by Mr. Greenbaum	172
Recross-Examination by Ms. Bataller-Schneider	174
Antonio Yanez	
Direct Examination by Mr. Cayton	182

FOR THE DEFENDANT:

None

INDEXEXHIBITS:IDEVDFOR THE GOVERNMENT:

1 - IP subscriber information	69	69
2 - Surveillance photos	70	71
3 - Photos of home at time of seizure	132	134
5 - Signed Miranda card	74	75
6 - CD of interview with defendant	114	116
9 - Hard drive	139	146
12 - Hard drive	141	146
15 - Hard drive	142	146
18 - Hard drive	143	146
21 - Hard drive	143	146
24 - Hard drive	144	146
27 - Hard drive	144	146
30 - Hard drive	144	146
38 - Video explanation of BitTorrent	23	23
39 - Signed Miranda warning	156	157
41 - CD of files from defendant's devices	207	208

FOR THE DEFENDANT:

None

Pecos, Texas - Monday, July 18, 2022

(9:50 a.m.)

P R O C E E D I N G S

---000---

(Outside the presence of the jury; defendant present)

THE COURT: Be seated, please.

THE COURT: Mr. Cayton, Mr. Gorman, were you all able to view and agree on anything?

MR. GORMAN: We did. I reviewed the content on that, Your Honor. The excerpts they want to play, I don't have any objection to it, Your Honor.

THE COURT: Okay.

MR. GORMAN: I would stipulate that is fact --

THE COURT: Okay.

MR. GORMAN: -- the material it's purported to be.

THE COURT: Very good. All right. So we're ready to bring in the jury, correct?

MR. CAYTON: Yes, Your Honor.

THE COURT: All right. Very well.

Ms. Lerma, you got your indictment ready?

THE CLERK: Yes, sir.

THE COURT: All right. Let's rise for the jury, please.

(Jury in at 9:51 a.m.)

THE COURT: All right. We are all going to be seated. You all stay standing, please, and raise your right hand.

1           Let's all everybody else be seated.

2           (Jury sworn)

3           THE COURT: Thank you. You may be seated.

4           You'll find in your chairs some -- a pad. We'll talk  
5 about that in a minute. And then your juror button, or juror  
6 badges. If you'd go ahead and put those on. You'll want to wear  
7 those while you're here. If you go out to lunch or go home,  
8 don't -- just leave it in here. I don't want anybody in town or  
9 on the economy recognizing you, profiling you as a juror. But we  
10 want to know here if you're a juror, of course.

11           Members of the jury, you've now been sworn as the jury  
12 to try this case. You and you alone are the judges of the facts.  
13 By your verdict you'll decide the disputed issues of fact. I'll  
14 decide all questions of law that arise during the trial. Before  
15 you retire to deliberate at the close of the case, I'll instruct  
16 you on the rules of law that you must follow and apply in  
17 deciding upon your verdict.

18           Nothing I may say or do during the trial is intended to  
19 indicate, nor should be taken by you as indicating what your  
20 verdict should be. Your verdict should be based upon your  
21 independent assessments of the facts in this case as applied to  
22 the law on which the Court instructs you at the conclusion of the  
23 case.

24           The evidence from which you will find the facts will  
25 consist of the testimony of witnesses, documents, and other

1 things received into the record as exhibits, and any facts the  
2 lawyers agree or stipulate to, or that the Court may instruct you  
3 to find.

4 Certain things are not evidence and must not be  
5 considered by you. Statements, arguments, and questions by  
6 lawyers are not evidence. Objections to questions by lawyers are  
7 not evidence. Lawyers have an obligation to their clients to  
8 make an objection when they believe the evidence being offered is  
9 improper under the rules of evidence.

10 You should not be influenced by the objection or by the  
11 Court's ruling on it. If I sustain an objection, ignore the  
12 question. If I overrule an objection, treat the answer like you  
13 would any other. If you are instructed that some item of  
14 evidence is received for a limited purpose only, you must follow  
15 that instruction.

16 Testimony the Court has excluded or told you to  
17 disregard is not evidence and must not be considered by you.  
18 Anything you may have seen or heard outside the courtroom is not  
19 evidence and must be disregarded. You'll decide the case solely  
20 on the evidence presented here in the courtroom.

21 There are two kinds of evidence, direct and  
22 circumstantial. Direct evidence is direct proof of a fact such  
23 as testimony of an eyewitness. Circumstantial evidence is proof  
24 of facts from which you may infer or conclude that other facts  
25 exist. I'll give you further instructions on these as well as

1 other matters at the end of the case. But have in mind that you  
2 may consider both kinds of evidence, direct and circumstantial.

3 It will be up to you to decide which witnesses to  
4 believe, which witnesses not to believe, and how much of any  
5 witness' testimony to accept or reject. I'll give you some  
6 guidelines for determining the credibility of witnesses at the  
7 end of this case.

8 You should give careful attention to the testimony and  
9 evidence presented for your consideration during the trial, but  
10 you should not form or express any opinion about the case one way  
11 or the other until you have heard all of the evidence, the  
12 closing arguments of the lawyers, and my instructions on the  
13 applicable law.

14 Although exhibits which I admit into evidence during  
15 the course of the trial will be available to you for your  
16 inspection and review during your deliberation on a verdict,  
17 under normal circumstances, no written transcript of the  
18 testimony of witnesses can be made available to you for your  
19 review during your deliberations. Nor under normal circumstances  
20 can all or any significant portion of a witness' testimony be  
21 read to you once you commence your deliberations.

22 It's therefore very important that you pay strict  
23 attention to the testimony given by each witness during the trial  
24 of the case. If you'd like to take notes during the trial, you  
25 may do so. On the other hand, you're not required to take notes.

1 Each of you should make your own decision about this.

2 We've provided a notebook, a little steno pad and a  
3 pencil for you. You're welcome to use that. You're welcome to  
4 set it down on the floor and not use it. Either way. If you  
5 decide to take notes, be careful not to get so involved in your  
6 note taking that you become distracted from the ongoing  
7 proceedings.

8 Your notes should be used only as memory aids. You  
9 should not give your notes precedence over your independent  
10 recollection of the evidence. If you do not take notes, you  
11 should rely upon your independent recollection of the  
12 proceedings, and you should not be unduly influenced by the notes  
13 of other jurors.

14 Notes are not entitled to any greater weight than the  
15 memory or impression of each juror as to what the testimony may  
16 have been. Whether you take notes or not, each of you must form  
17 and express your own opinion as to the facts of the case.

18 During the trial, you must not discuss the case in any  
19 manner among yourselves or with anyone else. And you must not  
20 permit anyone to attempt to discuss it with you or even in your  
21 presence. And insofar as the lawyers are concerned, as well as  
22 others who you may come to recognize as having some connection  
23 with the case, you're instructed that in order to avoid even the  
24 appearance of impropriety, you should have no conversation  
25 whatsoever with those persons while you're serving on the jury.



1           You'll notice our court security officers in the  
2 courtroom. A couple just left. We've got one over here, those  
3 officers in the blue blazers with that distinctive tie. If you  
4 have a question that you feel you need to ask me or something to  
5 bring to my attention, tell one of them and they'll let me know.

6           You may not attempt to conduct any independent  
7 investigation concerning this case. You must avoid reading any  
8 articles that might be published about the case now that the  
9 trial's in progress. You must also avoid listening to or  
10 observing any broadcast news program, whether that be television,  
11 radio, or internet, because there is a possibility of mention be  
12 made of the case during such a broadcast.

13           Do not research the case on the internet or post about  
14 the case on social media. The reason for these cautions, of  
15 course, lies on the fact that it will be your duty to decide this  
16 case solely on the basis of the testimony and evidence presented  
17 during the trial without consideration of any other matters  
18 whatsoever.

19           At times during the trial I may be called upon to make  
20 rulings of law on motions or objections made by the lawyers. You  
21 should not infer or conclude from any ruling that I may make that  
22 I have any opinions about the merits of the case concerning one  
23 side, or favoring one side of the case or the other. I don't.  
24 If I sustain an objection to a question that goes unanswered by  
25 the witness, you should not speculate on what answer might have

1     been given, nor should you draw any inferences or conclusions  
2     from the question itself.

3             During the trial, it may be necessary for me to confer  
4     with the lawyers at times out of your hearing for certain  
5     questions of law or procedure that require consideration by the  
6     Court alone. Feel free to stand and stretch quietly during any  
7     such sidebar conference.

8             On occasion, should I think the private conference may  
9     take longer, I may excuse you from the courtroom as a convenience  
10    to you while I discuss matters with the lawyers. We'll try to  
11    keep -- limit those interruptions as much as possible. But you  
12    should remember at all times the importance of the matter you're  
13    here to determine, and should be patient even if the case seems  
14    to go slowly at times. I promise to try to keep that to a  
15    minimum.

16            We'll take regular comfort breaks. There are snacks  
17    and beverages in the jury room along with restrooms. At any  
18    time, however, if you feel you need to take an unscheduled break,  
19    simply raise your hand so that I see it. I'll take a break at  
20    the soonest point possible thereafter.

21            Ms. Lerma, my courtroom deputy, is real good at  
22    spotting too. If I don't see it, if you just hold your hand up  
23    and leave it up, we'll get you out of here. And if it's real  
24    urgent, let us make sure we know. I'll get you out of here as  
25    soon as possible, I promise.

1           As the trial begins, the lawyers for each side are  
2 going to be given an opportunity to make opening statements in  
3 which they may explain the issues in the case and summarize the  
4 facts they expect the evidence will show. First, the prosecution  
5 may make an opening statement, which again is simply an outline  
6 to help you understand the evidence the prosecution expects to  
7 introduce.

8           Next, the defendant's attorney may elect to make an  
9 opening statement or may defer the opening statement until after  
10 the prosecution rests its case in chief, should the defense wish  
11 to make an opening statement. No opening statement is required  
12 by either party. If they choose to give you an opening  
13 statement, they have the same amount of time. Neither side has  
14 more than the other.

15           The Government will then present witnesses and counsel  
16 for the defense will -- for the defendant will -- may cross-  
17 examine those witnesses. Following the Government's case, the  
18 Defense may, should the Defense elect, present witnesses. And  
19 the Prosecution would have the opportunity to cross-examine.  
20 Subsequently, the Government may decide to present rebuttal  
21 witnesses.

22           After all the testimony and evidence has been  
23 presented, the lawyers will then be given another opportunity to  
24 address you and make their summations or final arguments in the  
25 case. The statements the lawyers make now, or are about to make

1 now as well as the arguments they present at the end of the trial  
2 are not to be considered by you either as evidence in the case  
3 which comes only from the witnesses and exhibits, or as your  
4 instruction on the law which will come only from me.

5 Nevertheless, these statements now and the arguments  
6 later are intended to help you understand the issues and the  
7 evidence as it comes in, as well as the positions taken by both  
8 sides.

9 Ms. Lerma?

10 THE CLERK: In Cause Number P:20-CR-388, the United  
11 States of America versus Thomas Scott Perkins, the grand jury  
12 charges, Count 1, from September 27th, 2019 to October 1st, 2019,  
13 within the Western District of Texas and elsewhere, the defendant  
14 Thomas Scott Perkins did knowingly distribute child pornography  
15 as defined in Title 18 United States Code Section 2256(8)(A),  
16 that had been shipped or transported in or affecting interstate  
17 or foreign commerce by any means including by computer all in  
18 violation of Title 18 United States Code Section 2252A(a)(2).

19 Count 2, on or about January 9th, 2020, in the Western  
20 District of Texas, the defendant Thomas Scott Perkins did  
21 knowingly possess materials, specifically a Western Digital hard  
22 drive Model Number WD800, Serial Number WD-WCAJ92661471, that  
23 contained images of child pornography as defined in Title 18  
24 United States Code Section 2256(8)(A) that involved a pre-  
25 pubescent minor under the age of 12 years that had been mailed,

1 shipped, and transported in interstate and foreign commerce, was  
2 produced using material which had been shipped and transported in  
3 interstate and foreign commerce by any means including by  
4 computer, all in violation of Title 18 United States Code Section  
5 2252A(a) (5) (B) .

6 Count 3, on or about January 9th, 2020, in the Western  
7 District of Texas, the defendant Thomas Scott Perkins did  
8 knowingly possess material, specifically a Maxtor hard drive  
9 device model Diamondmax Plus 9, Serial Number Y45BC9X3 that  
10 contained images of child pornography as defined in Title 18  
11 United States Code Section 2256(8) (A) that involved a  
12 prepubescent minor under the age of 12 years that had been  
13 mailed, shipped, and transported in interstate and foreign  
14 commerce, was produced using material which had been shipped and  
15 transported in interstate and foreign commerce by any means  
16 including by computer, all in violation of Title 18 United States  
17 Code Section 2252A(a) (5) (B) .

18 Count 4, on or about January 9th, 2020, in the Western  
19 District of Texas, the defendant Thomas Scott Perkins did  
20 knowingly possess material, specifically a Seagate hard drive  
21 device model ST1000LM049, Serial Number WGS5QBVC that contained  
22 images of child pornography as defined in Title 19 United States  
23 Code Section 2256(8) (A) that involved pre-pubescent under the age  
24 of 12 years that had been mailed, shipped, and transported in  
25 interstate and foreign commerce, was produced using material

1 which had been shipped and transported in interstate and foreign  
2 commerce by any means including by computer, all in violation of  
3 Title 18 United States Code Section 5252A(a) (5) (B) .

4 Count 5, on or about January 9th, 2020, in the Western  
5 District of Texas, the defendant Thomas Scott Perkins did  
6 knowingly possess material, specifically a Seagate hard drive  
7 device model SRDONF2, Serial Number NA8EYNL7 that contained  
8 images of child pornography as defined in Title 18 United States  
9 Code Section 2256(8) (A) that involved a prepubescent minor under  
10 the age of 12 years that had been mailed, shipped, and  
11 transported in interstate and foreign commerce, was produced  
12 using material which had been shipped and transported in  
13 interstate and foreign commerce by any means including by  
14 computer, all in violation of Title 18 United States Code Section  
15 2252A(a) (5) (B) .

16 Count 6, on or about January 9th, 2020, in the Western  
17 District of Texas, the defendant Thomas Scott Perkins did  
18 knowingly possess materials, specifically a Seagate hard drive  
19 device model SRDOPV1, serial number NA9Q02S9 that contained  
20 images of child pornography as defined in Title 18 United States  
21 Code Section 2256(8) (A) that involved a pre-pubescent minor under  
22 the age of 12 years that had been mailed, shipped, and  
23 transported in interstate and foreign commerce, was produced  
24 using material which had been shipped and transported in  
25 interstate and foreign commerce by any means including by

1 computer, all in violation of Title 18 United States Code Section  
2 2252A(a) (5) (B) .

3 Count 7, on or about January 9th, 2020, in the Western  
4 District of Texas, the defendant Thomas Scott Perkins, did  
5 knowingly possess material, specifically a Western Digital hard  
6 drive, device model WDEYFT0040BVK-0-OA, Serial Number  
7 WX51D961NE27 that contained images of child pornography as  
8 defined in Title 18 United States Code Section 2256(8) (A) that  
9 involved a prepubescent minor under the age of 12 years that had  
10 been mailed, shipped, and transported in interstate and foreign  
11 commerce and was produced using material which had been shipped  
12 and transported in interstate and foreign commerce by any means  
13 including by computer, all in violation of Title 18 United States  
14 Code Section 2252A(a) (5) (B) .

15 Count 8, on or about January 9th, 2020, in the Western  
16 District of Texas, the defendant Thomas Scott Perkins did  
17 knowingly possess material, a Samsung hard drive, Serial Number  
18 S267J1LZ503188, that contained images of child pornography as  
19 defined in Title 18 United States Code Section 2256(8) (A) that  
20 involved a pre-pubescent minor under the age of 12 years that had  
21 been mailed, shipped, and transported in interstate and foreign  
22 commerce, was produced using materials which had been shipped and  
23 transported in interstate and foreign commerce by any means,  
24 including by computer, all in violation of Title 18 United States  
25 Code Section 2252A(a) (5) (B) .

1 Count 9, on or about January 9th, 2020, in the Western  
2 District of Texas, the defendant Thomas Scott Perkins did  
3 knowingly possess material, specifically a SimpleTech hard drive  
4 device model 96300-41001-68, Serial Number 09335092000206005 that  
5 contained images of child pornography as defined in Title 18  
6 United States Code Section 2256(8) (A) that involved a pre-  
7 pubescent minor under the age of 12 years that had been mailed,  
8 shipped, and transported in interstate and foreign commerce, was  
9 produced using material which had been shipped and transported in  
10 interstate and foreign commerce by any means including a  
11 computer, all in violation of Title 18 United States Code Section  
12 2252A(a) (5) (B). A true bill signed by the foreperson of the  
13 grand jury.

14 THE COURT: Thank you. Counsel, how does the defendant  
15 plead to Counts 1 through 9 of the indictment, guilty or not  
16 guilty?

17 MS. BATALLER-SCHNEIDER: Not guilty.

18 THE COURT: Thank you very much. The Court will  
19 recognize Mr. Cayton to begin our opening statements. You may  
20 proceed, sir.

21 MR. CAYTON: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 OPENING STATEMENT BY THE GOVERNMENT

24 MR. CAYTON: Good morning, ladies and gentlemen.

25 You're going to hear that in September of 2019, a



1 special agent with the Department of Homeland Security or HSI  
2 investigations from the Southern District of Texas was doing a  
3 BitTorrent search, and you're going to hear a little bit more  
4 about that, but searching for people who were sharing or  
5 distributing child pornography. And he was able to locate and  
6 download child pornography from an IP address that was located in  
7 Fort Stockton, Texas.

8 And Fort Stockton was not his area. He was contacted  
9 later by an HSI agent from the Alpine office about these  
10 downloads that he had received. And through secure means, those  
11 downloads were sent to computer forensics analysts in El Paso,  
12 Texas through HSI, and then were given to special agent from the  
13 Alpine division of Homeland Security who reviewed those  
14 downloads.

15 And Agent Ferg is going to talk to you about some of  
16 those videos that he viewed that were downloaded from this IP  
17 address in Fort Stockton. After reviewing those videos, Special  
18 Agent Ferg opened an investigation. He used public source  
19 information to find out where this IP address was located, this  
20 internet address, whose address it was. He obtained a search  
21 warrant for the address. And on January 9th, 2020, a search  
22 warrant was preformed, or a search was performed on the  
23 defendant's address.

24 Multiple pieces of electronic evidence were seized.  
25 And you're also going to hear that Special Agent Ferg had a

1 chance to talk to the defendant about this. And the defendant  
2 made admissions to not only possessing child pornography, but  
3 also to sharing or distributing child pornography.

4 You're going to hear next that all of these electronic  
5 devices that were seized were sent to a computer forensics  
6 analyst who reviewed the data on several of those devices. What  
7 they do is they go through those devices, they use special  
8 software, and they look at the data. Once they've got data they  
9 believe is potentially criminal, then they send that off to the  
10 HSI special agent who's in charge of the case and have him review  
11 that data. And you're going to have an opportunity to see some  
12 of the data that was recovered from the defendant's devices.

13 You just heard about one count of distribution and  
14 eight counts of possession of child pornography images or videos.  
15 And you're going to hear that each of those possession counts, or  
16 you've already heard, are on separate devices. And you're going  
17 to have a chance to hear that all those devices were in the  
18 possession of the defendant. Like I said, he made admissions.

19 And at the end of this trial, after you've heard all  
20 the evidence, we will stand before you again and ask that you  
21 find the only logical conclusion based upon the evidence, and  
22 that's that the defendant is guilty of all charges. Thank you.

23 THE COURT: Thank you, Mr. Cayton.

24 Ms. Bataller?

25 OPENING STATEMENT BY THE DEFENDANT

1 MS. BATALLER-SCHNEIDER: Perception is everything.  
2 Each of our own personal realities is created through the lenses  
3 of our own personal perspective. Thomas Perkins' perception is  
4 very different from yours or mine. And as a result, so is his  
5 reality.

6 You will hear that from a young age, Thomas was  
7 diagnosed with Asperger's also known as Autism Spectrum Disorder  
8 or ASD, and schizoaffective disorder as well as schizophrenia.  
9 Unlike what you may have seen in the movies, this doesn't make  
10 Thomas rock back and forth uncontrollably, make repetitive and  
11 exaggerated hand movements, or visibly respond to voices in his  
12 head. But it does have a profound effect on his ability to  
13 understand reality as we do.

14 Let's talk about Asperger's first. People with  
15 Asperger's have severe impairments in social skills, ability to  
16 understand others' feelings and facial expressions. Though  
17 people with Asperger's try to be rule-followers, they often can't  
18 tell the difference between right and wrong when it comes to  
19 social situations.

20 Because people with Asperger's have a difficult time  
21 interacting with others or understanding the world the way that  
22 others do, they tend to be loners, unable to develop the  
23 relationships that they and all humans crave. They often don't  
24 experiment sexually like other young people, and have few if any  
25 friends.

1           They often become obsessed with collecting things, not  
2     because of an interest in the actual thing that they're  
3     collecting, but rather an interest in the act of collecting  
4     itself. You will hear evidence of why Thomas has been diagnosed  
5     with Asperger's. You will hear that he struggles to understand  
6     social cues in a world where that's expected of us.

7           As a result, he has very few friends or other people  
8     that he interacts with regularly. You will hear that he's never  
9     had a sexual relationship and doesn't understand sexuality the  
10    way you or I might. You will hear that like many people with an  
11    Autism Spectrum Disorder, Thomas has an obsession with computers  
12    and collecting things.

13          Schizoaffective Disorder, on the other hand, is a  
14    mental health disorder that is marked by a combination of  
15    schizophrenia symptoms such as hallucinations or delusions and  
16    mood disorder symptoms such as depression or mania. You will  
17    hear evidence that Thomas regularly hears voices. He has two  
18    beings which he calls angels that tell him what to do and explain  
19    what will happen to him.

20          He also has what he calls a sex demon who regularly  
21    visits him and has sex with him against his will. You will hear  
22    that these delusions are so real to Thomas that he can hear the  
23    voices of these angels and feel the touch of this demon.

24          All that said, like I told you on Friday, we understand  
25    that this is not an easy case. You will have to see some awful

1 things. The Government will show you images you will not want to  
2 see. We are genuinely sorry that you have to see these things.  
3 But this case is not about how terrible these images are. This  
4 case is about perception.

5 The Government will use these images to paint a picture  
6 for you of what happened in this case. But this painting is only  
7 a small part of what the actual reality is. Your job will be to  
8 decide whether knowing about the disorders that Thomas has that  
9 directly impact his reality, Thomas could have understood that he  
10 was knowingly possessing these images, or knowingly distributing  
11 them to others, especially when the evidence will show that he  
12 didn't actively send out any images or videos to anyone else.

13 He simply failed to turn off the sharing capabilities  
14 that come as a default of the programs he was using. And in  
15 fact, he had told agents he did not intentionally share these  
16 things.

17 When you look at the whole picture of this case, and  
18 when you understand the limited lense through which Thomas sees  
19 the world, we believe you will come to the only just decision in  
20 this case and find Thomas not guilty on all counts. Thank you.

21 THE COURT: Thank you, ma'am.

22 Mr. Cayton, Mr. Greenbaum, your first witness?

23 MR. CAYTON: Your Honor, the Government calls Agent  
24 Bonneau.

25 THE COURT: Can you have that agent come on in?

Bonneau - Direct/Cayton

22

1 (Pause)

2 THE COURT: Sir, if you'd come on up. Stop right  
3 there. We'll have you raise your right hand, please.

4 ANDREW BONNEAU, GOVERNMENT'S WITNESS, SWORN

5 THE COURT: You may have a seat. Adjust yourself to  
6 the microphone, pull it down if you need to. I'll tell you as we  
7 go if you need to be closer or farther from it. You may proceed,  
8 Mr. Cayton.

9 MR. CAYTON: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. CAYTON:

12 Q Good morning. Can you please spell -- state your name and  
13 spell it for the record?

14 A My name is Andrew Bonneau spelled B-O-N-N-E-A-U.

15 Q Where are you currently employed?

16 A I'm a special agent with Homeland Security Investigations in  
17 Fort Wayne, Indiana.

18 Q And how long have you --

19 THE COURT: Back up.

20 MR. CAYTON: I apologize, Your Honor.

21 THE COURT: It's all right.

22 MR. CAYTON:

23 Q How long have you been a special agent with Homeland  
24 Security Investigations?

25 A I've been employed as a special agent with Homeland Security

Bonneau - Direct/Cayton

23

1 Investigations since 2016.

2 Q Now was Fort Wayne, Indiana, your first assignment?

3 A It was not.

4 Q Where were you previously assigned?

5 A Brownsville, Texas.

6 Q And while in Brownsville, were you part of any particular  
7 investigations regarding children or child electronic material?

8 A Yes. I was assigned to the Rio Grande Valley Child  
9 Exploitation Investigation Task Force down in Brownsville, Texas,  
10 focusing primarily on child exploitation-type investigations.

11 Q And through that duty, did you participate in searches for  
12 BitTorrent files?

13 A I ran law enforcement BitTorrent software that would  
14 identify IP addresses that were known to possess torrent files  
15 that contained files of child pornography.

16 MR. CAYTON: And at this time, Your Honor, I'd like to  
17 show a brief video that explains BitTorrent. I believe it's  
18 Government Exhibit 38.

19 MR. GORMAN: No objection, Your Honor.

20 THE COURT: Government's Exhibit 38 is admitted without  
21 objection.

22 (Government's Exhibit 38 admitted into evidence)

23 THE COURT: You may publish.

24 BY MR. CAYTON:

25 Q And, Special Agent Bonneau, have you previously watched this

Bonneau - Direct/Cayton

24

1 video?

2 A Yes, sir, I have.

3 Q Does it explain how the BitTorrent program works?

4 A Yes, it does.

5 Q Will it assist you in your testimony?

6 A Yes, it will.

7 (Pause)

8 MR. CAYTON: I apologize, Your Honor. Just brief  
9 technical difficulties.

10 THE COURT: Yes, sir.

11 (Video begins at 10:24 a.m./ends at 10:28 a.m.)

12 BY MR. CAYTON:

13 Q So, Agent Bonneau, when you're doing searches, or when  
14 you're doing investigations regarding BitTorrent, is this  
15 essentially the type of software you're using?

16 A Yes. That's essentially the type of software. We use a law  
17 enforcement version of that software.

18 Q What is unique about the law enforcement version?

19 A So on the law enforcement side, one of the functions is it  
20 does not share with other people. So there's no distribution in  
21 regards to the files. And when it connects to a certain IP, it  
22 makes sure -- it makes sure that IP is the single source for all  
23 downloads. So we're not getting it from multiple users.

24 As the video explained there, it's pulling pieces. And if  
25 it pulled pieces from multiple different IP addresses, we



Bonneau - Direct/Cayton

25

1 wouldn't know for sure which one actually gave us the piece that  
2 contains the child pornography. So it pulls from a single source  
3 or a single IP, and we get all the pieces which proves that that  
4 image or the child pornography is from that particular IP  
5 address.

6 Q Can you describe briefly what an IP address is?

7 A Basically an IP address is just like an internet-type  
8 address, like your home address. It just allows you to connect  
9 to the -- to the internet. Everyone who connects to the internet  
10 has an IP. If you have internet service at home, you're assigned  
11 an IP so when you connect out to the web it just knows where to  
12 send the information to.

13 Q And so you said when you're doing a search through your law  
14 enforcement software, you're looking at the IP address that  
15 you're receiving information from?

16 A So to be clear, I'm not doing any sort of active searches on  
17 my own. The software just runs, and it runs based off what are  
18 known torrent files out there that contain child pornography.  
19 And it looks for any IP addresses sharing those torrents with  
20 other users. And when it identifies an IP, it directly connects  
21 to the IP to see if there's any files there that it's willing to  
22 share with our investigative software.

23 Q Are you able to limit the region where you're trying to find  
24 these torrents from?

25 A It usually is assigned by what state you're working in. So

Bonneau - Direct/Cayton

26

1 when I was assigned to Brownsville, Texas, my software worked for  
2 the entire State of Texas.

3 Q So it wouldn't be uncommon for you to get a link or a file  
4 from an IP address that was outside of your generalized area with  
5 HSI?

6 A That's correct.

7 Q Were you ever contacted from a special agent from the Alpine  
8 division regarding potential downloads that you had received?

9 A I was.

10 Q And who was that agent?

11 A Special Agent David Ferg.

12 Q And after he contacted you, did you do a search of the files  
13 that you had downloaded to see if you had received any from the  
14 Alpine region?

15 A Yes. He provided the IP address. I looked for the IP  
16 address in the files that were downloaded by the investigative  
17 software. I identified that IP address and make sure there was  
18 actually files in there worthwhile to even forward off to him.  
19 Usually I do that because I usually get, like, two or three  
20 requests a month from the investigators all around the State of  
21 Texas when I was here in Texas requesting if I had files.

22 So I worked through them just to make sure at least one file  
23 in there contained child pornography. And if it does, I let them  
24 know and then we work on getting those files to that  
25 investigator.

Bonneau - Direct/Cayton

27

1 Q Do you remember about how many downloads or how many files  
2 you got from the IP address that was requested by Special Agent  
3 Ferg?

4 A I don't specifically.

5 Q What did you do based upon his request with the files that  
6 you had downloaded from that IP address?

7 A From that IP address, once it confirmed there was actually  
8 at least one file of child pornography, I -- basically the way we  
9 work it, we have our own law enforcement-owned cloud-type system.  
10 I downloaded those files, that whole file packet, upload it to  
11 own cloud to CFAs in El Paso, Texas. And I believe from there  
12 Mr. Ferg was able to obtain those files.

13 Q And so you sent it to the agent who may have responsibility  
14 for that area to follow up on an investigation?

15 A Correct.

16 Q Because that's not your area to investigate?

17 A Correct.

18 MR. CAYTON: May I have just a moment, Your Honor?

19 THE COURT: Yes, sir, you may.

20 BY MR. CAYTON:

21 Q I want to talk to you a little bit more about BitTorrent.  
22 Before you started doing these types of investigations, had you  
23 ever been familiar with BitTorrent software?

24 A Before I started these, I never even heard of it before.

25 Q And did -- was it a learning curve to learn how to use, or

Bonneau - Direct/Cayton

28

1 was it pretty easy to just start clicking a button?

2 A No, I had -- to even use the software, I had to go through a  
3 40-hour training to be able to be certified in actually using the  
4 law enforcement BitTorrent software.

5 Q So you talked about these single source downloads. The  
6 videos that you sent to Special Agent Ferg, did all of them come  
7 from the IP address that was requested?

8 A They did.

9 Q And was that IP address out of Fort Stockton, Texas?

10 A I didn't know. It usually gives us a region, but I can't  
11 remember exactly what region. But based on the reports that I  
12 read written by Mr. Ferg, it was out of Fort Stockton.

13 Q Now you said you don't look through all the files.

14 A For cases that are not mine, I do not look through all the  
15 files.

16 Q Why not?

17 A I just don't want to see all that stuff all the time. I  
18 mean, that's --

19 Q And it's not an investigation that you would complete?

20 A Correct.

21 Q Is that fair to say?

22 MR. CAYTON: Pass the witness, Your Honor.

23 THE COURT: Thank you.

24 Mr. Gorman, your witness.

25 CROSS-EXAMINATION

1 BY MR. GORMAN:

2 Q Agent Bonneau, you indicated you had worked at Brownsville,  
3 correct, not currently?

4 A Yes, sir. Correct.

5 Q And your work covers the entire State of Texas?

6 A So the investigative software that we use, how it's  
7 defaulted, it, you know, the administrators of the software  
8 assign you to a state. And it just grabs -- it's monitoring all  
9 the state. So I look for, specifically for my investigations, I  
10 look for IPs that are sharing these files in my area.

11 However, I get contacted by investigators all around the  
12 state who are looking for files. And they ask me if I have them.  
13 They do -- I mean, I've asked other investigators for files too  
14 if I didn't get any in my area and I notice that they have them.  
15 So I think that answered your question.

16 Q And during your time at Brownsville, you worked primarily on  
17 a computer?

18 A Define that for me.

19 Q So much of the investigation you did while you were working  
20 in Brownsville specifically during the time of this case, did you  
21 go to the office, sit down, log into this computer, and that was  
22 your primary role?

23 A I mean, cyber-type investigations were my primary role. The  
24 computer would just run on its own. The software would run on  
25 its own. So I wouldn't check it every day. We're also getting

Bonneau - Cross/Gorman

30

1 numerous other types of leads from hands-on offenses, child porn,  
2 child production -- child pornography production. And we'd get  
3 leads from NCMEC as well. So I had all kinds of influxes of  
4 information while working down there.

5 So I would every once in a while check the computer to see  
6 if there was any new IPs in my area, and also would purge out my  
7 system because as it downloaded, it would take up all the storage  
8 space. So I would have to purge all those downloads out. We  
9 usually did that once a month or so.

10 Q And more or less with this investigative system, when you  
11 did sit down at your computer, you would sign into it and it  
12 would give you a bunch of alerts more or less?

13 A So it was more just a program running, almost how BitTorrent  
14 runs itself, and it would just have what Ips we were able to  
15 connect to and obtain files from that were making available for  
16 sharing. So the program would just be running. It wouldn't  
17 really sign into it.

18 You know, I look at it and see -- mainly I focus on my area,  
19 if there was new IPs in my area that had -- that were making  
20 available for sharing child pornography files. So I'd have to  
21 have a photo to really describe it to you.

22 Q But you had indicated that this is entirely generated by  
23 more or less an autonomous system that runs itself?

24 A Yes, it would.

25 Q And with regard to the system, and I guess the best analogy

1 is when you look at a car you usually have drivers, people that  
2 operate them, mechanics, people who work on them, and engineers,  
3 the people who envision and create them. In terms of this  
4 system, are you more of a driver?

5 A I'm more -- I'd be -- I would say I would be best more of a  
6 passenger. It's almost a self-driving car. Then I'm just  
7 sitting in it and watching things work, if that makes sense.

8 Q So you can't strip down the guts of this program, take it  
9 apart, and tell you what everything's doing in terms of the  
10 programming or how this program's built?

11 A No, I cannot.

12 Q So when you describe single-source download, you're more or  
13 less assuming something that came out of your training?

14 A No.

15 Based on the data file information we get, when it connects  
16 to a device, it actually prints us, not prints but it develops a  
17 data file that shows our direct handshake or connection to a  
18 particular IP and exactly what (indiscernible) it was looking for  
19 and what files it was able to download from that device or that  
20 IP that was making available for sharing.

21 Q And that's the autonomously generated information by this --  
22 I guess this computer system?

23 A The software, yes.

24 Q And in terms of that information, where is it stored?

25 A What do you mean by that?

1 Q So you just described the handshake connection, all this  
2 sort of data. Is it stored by this system?

3 A It's -- so it's actually when we initiate our software or  
4 law enforcement for the first time, we have to designate where  
5 the files are to be saved to. So it could either be on our work  
6 computer desktop in a certain file, or onto an external hard  
7 drive depending on how we set it up. So it just depends on where  
8 we -- where we point where the download should go.

9 Q Okay. And do you recall where that was in this case?

10 A I believe this case I had it -- I had it pulling it towards  
11 either it's called a TD receptor file, or TD down pulled file.  
12 And I believe those are an external that I had assigned to me at  
13 the time.

14 Q And referring to these movies or images or whatever it may  
15 be that the system picks up, how were those -- you said they were  
16 processed by more or less an automatic download system?

17 A Not necessarily. So it doesn't just download files  
18 randomly. The program's designed to look for torrents that  
19 contain child pornography. That's how it's designed. So known  
20 torrents are brought into a central database. It's usually  
21 through the National Center for Missing and Exploited Children.

22 Those torrents are brought into the software. And it just  
23 basically sits there and looks for any IPs that are sharing these  
24 torrent files that contain child pornography. I like to  
25 reference it to, like, it's like a traffic cop sitting on the



1 side of the road using radar and watching cars go by speeding.

2 It's essentially what it is doing.

3 Q But did you testify previously that it can have false hits,  
4 or is it -- do you have to do any sort of processing on this  
5 information in terms of the various information the system may  
6 download?

7 A What are you exactly asking?

8 Q So do you have to sort through these videos and images once  
9 the system brings them in, in terms of a download and decide this  
10 is something that's against the law. This is, you know, this is  
11 within the law, any type of decision like that on your part?

12 A Within context, yes, because as we are not sharing our files  
13 out, we are very low on the priority as far as receiving files  
14 from other BitTorrent users. So there might be times where we do  
15 a connection with a certain IP and we get a piece of a file just  
16 like how you saw on the video. And that piece, although it's a  
17 known series of child pornography, may not contain child  
18 pornography itself.

19 So we might only get that. So therefore technically at that  
20 point we do not have a crime in what we define as a crime even  
21 though we know it's child pornography. But we don't have the  
22 piece that actually shows the child pornography, the sexual act  
23 or the nudity or whatever the case may be.

24 So when I work an investigation regarding BitTorrent, I have  
25 to review the files to make sure, like, yeah, we actually

Bonneau - Cross/Gorman

34

1 captured or we got the piece that they were making available for  
2 sharing that is in fact child pornography. And then from there  
3 we send our subpoenas off for the IP addresses and continue the  
4 investigation from there.

5 Q And, Agent Bonneau, you indicated that in this case, Agent  
6 Ferg contacted you. How exactly did that happen? Why did he  
7 contact you?

8 A He would probably have to testify as to why he reached out  
9 to me. He just, he called me direct and asked if I had any  
10 downloads for this particular IP. And I looked at the software  
11 and I noticed that I did. I verified that at least one of the  
12 files was child pornography, and from there provided to Agent  
13 Ferg.

14 Q So the system is then generating alerts and sending it to  
15 other people as well, or is this -- sorry. Stated otherwise, was  
16 this contact potentially triggered by that automatic system you  
17 use, triggering something to Agent Ferg or some other reason?

18 A So the system itself does not send alerts to anybody. There  
19 is a law enforcement database system that basically looks for  
20 kind of the same things. However, it does not download child  
21 pornography files. It looks for IPs that are sharing torrents  
22 that are -- that contain child pornography. And I believe that's  
23 what Mr. Ferg did, as I've done before on some of my  
24 investigations.

25 Q All right. Agent Bonneau, in terms of this system, this

Bonneau - Cross/Gorman

35

1 system is essentially searching everywhere, correct? This -- in  
2 terms of the BitTorrent system.

3 A Define everywhere.

4 Q It's running searches on the internet in terms of -- in the  
5 BitTorrent network. It --

6 A I would say so it's not really searching for anything. It's  
7 actually just more sitting there, waiting for certain IP  
8 addresses to distribute known torrent files that contain child  
9 pornography. And when it sees it, it's like hey, I want some of  
10 that file just like how BitTorrent works. And when it latches on  
11 to that IP it says hey, thank you for sharing with me because  
12 you're making available to share to me.

13 So it's almost acting like anybody who downloads BitTorrent  
14 can use -- can get files from other people. So if we're all on  
15 the same network, we're all sharing with each other. We're  
16 downloading from each other and sharing with each other. The law  
17 enforcement system works almost exactly like that, however it's  
18 just to one IP and does not share out.

19 Q And I guess in part to clarify, the BitTorrent in question,  
20 or the BitTorrent issue, BitTorrent more or less is advertising  
21 software that's available on single computers. It doesn't  
22 actively project to a site like this, correct?

23 A So you're talking about BitTorrent itself? It's not  
24 necessarily advertising. It's people are searching for torrents.  
25 And once it -- once the user of that device downloads that

1 torrent, that torrent then works to go retrieve the files from  
2 that torrent. And that could be the file of the sasquatch or  
3 files of child pornography.

4 The law enforcement system is just acting as one of those  
5 systems that wants you to share a file with them. And as long as  
6 the user of BitTorrent has not moved those files out of their  
7 share folder, it automatically makes it available for sharing.

8 Q And that's a product of essentially the BitTorrent software  
9 on systems that are -- that have something displayed, correct?  
10 Something is on their system that's essentially being shared on  
11 the BitTorrent system by virtue of some program sharing it,  
12 correct?

13 A I mean, that's exactly how BitTorrent works. In order for  
14 BitTorrent to work, as it explains, you have to be willing to  
15 share. So people who know what BitTorrent is know for a fact  
16 that they will also be sharing unless they manually go and change  
17 those defaults. Otherwise, the system doesn't work.

18 So if you're not sharing, your chances of getting downloads  
19 are very minimal, which is why our system, the law enforcement  
20 system is very low priority. We -- it's hard for us to even  
21 connect to an IP that receive downloads because we are in fact  
22 not sharing on that same network.

23 Q And in regard to that last statement, you had indicated that  
24 they know it. Ultimately, they're bound by whatever their  
25 software does, correct?

1           You don't know what that software program is telling anyone  
2 else to do meaning you don't know what a user has done with its  
3 program other than the fact what you see is some program just  
4 reaching out saying the program itself has offered to share  
5 something, whatever the user's interaction with it, you wouldn't  
6 be able to know that, correct?

7       A     Well, I would say if you're looking to download BitTorrent,  
8 you're going to have an understanding of what BitTorrent is.

9           And it's a decentralized file sharing network. The reason  
10 you download BitTorrent is so you can download files, whatever  
11 they may be, at a quicker pace than trying to download directly  
12 from a centralized server. So, and you understand that when you  
13 are downloading using BitTorrent, you're also sharing. That's  
14 how I would define that.

15       Q     But you indicated again that you had no acquaintance with  
16 BitTorrent before you took on this job, correct?

17       A     That is correct.

18           MR. GORMAN: All right. Thank you, Your Honor.

19           THE COURT: Thank you. Any redirect?

20           MR. CAYTON: Yes, Your Honor.

21                   REDIRECT EXAMINATION

22       BY MR. CAYTON:

23       Q     I'd like to pick up where what you were just talking to  
24 Defense about sharing and downloading and BitTorrent software.  
25 You said it's pretty much a default of the system?

1 A Yes, pretty much.

2 Q Can you turn off sharing?

3 A You can.

4 Q Can you remove all the files from the shared folder so  
5 you're not sharing something?

6 A Yes, you can.

7 Q And you talked about someone -- I think you talked about it  
8 a little bit on direct but also on cross that this is complex  
9 software that people who are involved in torrents typically know  
10 how these things work?

11 A Yeah. If you're looking for BitTorrent, you have an  
12 understanding of how that system works.

13 Q It's not something that you can just -- it's not Microsoft  
14 Word, you just download the program and you can open up a window  
15 and start typing something on there. You have to know how this  
16 system works to get what you want?

17 A Yeah. Essentially you're going to have to --

18 MR. GORMAN: Objection, calls for speculation.

19 THE COURT: I'll sustain the objection. You can  
20 rephrase your question. If he has training and experience and  
21 knows that, I'll allow the answer, but if he does not -- rephrase  
22 your question.

23 BY MR. CAYTON:

24 Q You've used BitTorrent software?

25 A The law enforcement investigative software, yes.

1 Q For your law enforcement software, do you just turn it on  
2 and it starts downloading?

3 A I mean, there's --

4 Q Or it starts working?

5 A So the answer to the question have I download -- have I  
6 downloaded BitTorrent for investigative purposes like the client  
7 software, the normal public access software, I have. And that  
8 was to see what defaults were and everything else. As far as the  
9 law enforcement investigative software, we have to -- we download  
10 it, but we download it from the specific law enforcement site.  
11 And there's certain things we have to put in there to make sure  
12 that it actually operates correctly.

13 Q When you download the client software, do you just download  
14 it and it starts running?

15 A There are some prompts that you have to agree to. You know,  
16 it will give you default folders where your files that you  
17 download will go into. You have the option to change that or to  
18 make it not able to share from when you initially download the  
19 program.

20 If you agree to everything or the defaults, it essentially  
21 starts -- it doesn't just start downloading. You actually have  
22 to search for torrents. But it will default to where your files  
23 go into a download folder, and a shareable folder which sometimes  
24 are the same thing. So as long as you're downloading files,  
25 you're also sharing.

1 Q Now a little bit earlier when the Defense attorney was  
2 talking to you, he was talking about an analogy of driving a car,  
3 and you have a driver, a mechanic, a passenger. And you said for  
4 your law enforcement software you're kind of a passenger in a  
5 self-driving car.

6 A Correct.

7 Q But you said the law enforcement software is already  
8 searching for specific torrents that are known child pornography.

9 A That's correct.

10 Q If you are a standard client-user of BitTorrent, can you  
11 just sit back and let the program run, and it automatically will  
12 bring you what you want without you typing something in?

13 A No. You -- you have to actively search for torrents. And  
14 usually you have to go to some sort of file index and look for  
15 that specific torrent file. And once you download that torrent  
16 file, that's when BitTorrent will start working to retrieve the  
17 pieces of that torrent file.

18 Q So if the law enforcement officer using the law enforcement  
19 software is a passenger, how would that analogy work for the  
20 person, the standard BitTorrent user who's trying to find files  
21 using BitTorrent?

22 A I would say a driver.

23 MR. CAYTON: May I have just a moment, Your Honor?

24 THE COURT: Yes, sir.

25 MR. CAYTON: Pass the witness, Your Honor.



Bonneau - Recross/Gorman

41

1 THE COURT: Mr. Gorman?

2 RECROSS-EXAMINATION

3 BY MR. GORMAN:

4 Q Agent Bonneau, in terms of I guess as a general matter, this  
5 is not a direct client reaches out to you saying I want to send  
6 an email to you. This is not that type of software, correct?

7 A That is correct.

8 Q All right. And in terms of general software out there,  
9 you're sort of saying understanding of what people do or don't  
10 do, in terms of that, you said that you're not essentially a  
11 power user of BitTorrent. You don't dig into the sort of  
12 personal use, the type of public use software, correct?

13 A Are you asking me if I personally --

14 Q Personally.

15 A -- go into the public use of BitTorrent software?

16 Q Stated otherwise, you haven't downloaded all these various  
17 sites of BitTorrent and become familiar with the various settings  
18 and configurations or otherwise, correct?

19 A I would say not like -- I mean, there's so many versions out  
20 there. I've downloaded a few. I've downloaded other peer-to-  
21 peer clients as well just to have an understanding of what it is  
22 on the public market. As far as, like, deep dive using them  
23 every day, I don't do that.

24 But I mean, I -- like, version, you know, there's version  
25 2.73 and there's version 2.74. I haven't downloaded every single

1 version of BitTorrent. It's almost impossible unless I have all  
2 kinds of time on my hand. But I have a basic understanding of  
3 what BitTorrent is and how it operates.

4 Q But for example, uTorrent, BitTorrent, there's a ton of  
5 different BitTorrent software programs out there, correct?

6 A I mean, there's different versions, different -- you know,  
7 you have uTorrent clients, you have BitTorrent clients, you have  
8 -- I mean, even other peer-to-peer clients that all kind of do  
9 the same thing. I mean, they're all decentralized file sharing  
10 networks that, you know, you have to download a torrent in order  
11 to start downloading the files that you're looking for. And when  
12 you're downloading, you're also sharing direct.

13 Q But you would not be able to say with any certainty what  
14 every individual user's understanding is of the software, its  
15 settings, or otherwise, correct? It doesn't give you a vision  
16 into the world and once somebody sat at the computer and the  
17 computer to do that day, correct?

18 A So based on my experience, any person I have encountered or  
19 interviewed regarding these BitTorrent-type investigations, all  
20 of them have had an understanding of what BitTorrent or peer-to-  
21 peer clients are and what they do. And part of those  
22 investigations, especially if we enter a house with a lot of  
23 occupants, we tend to ask everyone what's your understanding of  
24 peer-to-peer clients.

25 And a majority of people would say I have no understanding

1 of peer-to-peer clients. But usually the person we're looking  
2 for or the suspect would have some sort of understanding of what  
3 BitTorrent is or what peer-to-peer clients are and what they do.

4 Q But you're testifying through general experience, not some  
5 crystal ball to look into the brains of everyone and their  
6 computers, correct?

7 A I mean, that would be impossible for me to --

8 MR. GORMAN: Correct. Thank you. No further  
9 questions, Your Honor.

10 THE COURT: Thank you. Mr. Cayton?

11 MR. CAYTON: No further questions, Your Honor.

12 THE COURT: You may step down. Thank you.

13 THE WITNESS: Thank you, sir.

14 (Witness excused)

15 THE COURT: Your next witness is?

16 MR. CAYTON: Special Agent David Ferg, Your Honor.

17 THE COURT: David Ferg? How long will he take? About,  
18 just about. We won't hold you to it.

19 MR. CAYTON: Probably about an hour and a half, Your  
20 Honor.

21 THE COURT: Okay. So let's take a short break then now  
22 so that we don't have to break up that testimony of that witness  
23 if that's going to be that long of a direct. And I'll try to  
24 send you to lunch around 12:30 or so. So get a snack if you need  
25 one in there.

1           When you come back out, you'll leave and come back,  
2 line up, and come back the same way you did. We'll all stay  
3 standing until we -- we all of us will sit down together. That  
4 way we honor everyone that comes in last, or later. And we'll do  
5 that.

6           But I'll try to stagger lunch so that we're not hitting  
7 the restaurant at the same time everybody else is. That usually  
8 works out pretty well. So I want to make sure y'all know the  
9 plan so that you can kind of plan accordingly.

10          You'll leave your notebooks here in the courtroom.  
11 Whether you're using it or not, leave your notebooks here. You  
12 won't take your notebooks back if you ever want to 'til you go  
13 retire to deliberate. So I'm going to keep telling you that.

14          Remember until the trial's over, you're not to discuss  
15 the case with anyone including your fellow jurors. If anyone  
16 approaches you or tries to talk to you about the case, advise me  
17 about it immediately. Just tell the court security officer.

18          Do not read or listen to any news reports of the trial  
19 or use any technology tools to do independent research. Do not  
20 post about this, please, on social media. There's no reason to  
21 do that. When the case is over, the trial's over, you're welcome  
22 to talk to anybody you want and do whatever you like.

23          Remember to keep an open mind until all the evidence  
24 has been received. Finally, do not speak with anyone in or  
25 around the courthouse other than your fellow jurors and court

1 personnel. Any questions?

2 Let's go, let's take a ten-minute break. Tell you  
3 what, let's go 'til ten after eleven going by that clock. That  
4 means you'll have 12 minutes. We'll stay here and do some work,  
5 and then we'll take a short comfort break as well. We'll come  
6 back kind of for a bit of a long haul. Around 12:30 I'm probably  
7 going to let you go to lunch even if we break up this next  
8 witness' testimony.

9 Any questions? All right. With that, let's rise for  
10 the jury, please. Thank you. You all just go ahead and go.

11 (Jury out at 10:58 a.m.)

12 THE COURT: All right. Please be seated. Outside the  
13 presence of the jury. Mr. Cayton, Mr. Greenbaum, anything you  
14 want to take up before we break also?

15 MR. CAYTON: Yes, Your Honor. Now might be an  
16 appropriate time to talk about the 404 --

17 THE COURT: Sure.

18 MR. CAYTON: -- notice because I -- I mean, I believe  
19 most everything but the first, the very first bullet on the 404  
20 would come out during Special Agent Ferg's testimony or the  
21 playing of the hearing.

22 THE COURT: Let me find that document.

23 MR. CAYTON: I figure it's easier now, and that way we  
24 can also make sure that --

25 THE COURT: No, that's why I asked. I wanted to talk

1 about it now. All right. So tell me what, to the extent that  
2 you can, tell me what statements --

3 MR. CAYTON: So item number one would be if the parents  
4 testify. And that's --

5 THE COURT: You're going to have to speak up for me.  
6 I'm sorry.

7 MR. CAYTON: I apologize, Your Honor.

8 THE COURT: No, no. I've got a fan back here that's  
9 keeping some computer parts I think for the whole thing, the  
10 whole system cool. And so I have a hard time. I'm not just  
11 getting old. I'm not just years and years in the military. But  
12 I'll have to ask sometimes to speak up. When everybody else is  
13 here, they're saying why is he asking that because it's perfectly  
14 clear. That's why I do that. So --

15 MR. CAYTON: My wife says she can't hear me either,  
16 Your Honor.

17 THE COURT: Yeah, well I'm with your wife. You're a  
18 little soft spoken. So it's all right. Go ahead.

19 MR. CAYTON: Item number two on the 404 notice,  
20 specifically that he had masturbated to looking at nudist,  
21 underage nudist images and images that he knew to be child  
22 pornography. I believe specifically he says in the interview  
23 that he hadn't masturbated to it in over a year.

24 THE COURT: Right.

25 MR. CAYTON: But it's still the fact that he was

1 sexually aroused by the material I think goes to his motive and  
2 intent and otherwise desire to download and possess this  
3 material.

4 THE COURT: Ms. Bataller?

5 MS. SCHNEIDER-BATALLER: Yes, Your Honor.

6 Whether or not he masturbated to this has nothing to do  
7 with whether or not he possessed these things. Beyond that, Your  
8 Honor, it is so highly prejudicial and is so low on the probative  
9 scale that I believe that the -- even if Your Honor were to find  
10 that there was some valid reason for it, it's just way to  
11 prejudicial to introduce to the jury.

12 MR. CAYTON: Well, Your Honor, in response, I mean, one  
13 of the elements is knowledge. He had to knowingly possess and  
14 knowingly distribute. And the fact that he is acknowledging that  
15 he sexually gratified himself to this shows that he knew he  
16 possessed it.

17 I think that the Court could easily see an argument  
18 from the Defense that he downloaded it, and he actually says this  
19 in some of his interview as well, that he just downloaded a ton  
20 of files and he would weed through it later. Well, arguably if  
21 he didn't know he downloaded child pornography, that wouldn't be  
22 knowledge.

23 But if he was using the child pornography for a  
24 specific purpose, then that is knowledge that he possessed the  
25 material and that is relevant and I don't think it's unduly

1 prejudicial, especially when we have the type of material we're  
2 talking about here.

3 THE COURT: Ms. Bataller, not that what you state in  
4 opening statement is evidence. But it does dictate sort of a  
5 roadmap to the jury of what the Defense sees.

6 You did speak about collecting because of Mr. Perkins  
7 mental illness or whatever it may be, collecting things and sort  
8 of left the 9impression, I thought, collecting things for whether  
9 there was a good reason to or not.

10 MS. SCHNEIDER-BATALLER: Right, Your Honor. And I  
11 understand that.

12 I would just point to I don't see how -- I mean, under  
13 the statute, there's nothing in the statute that says you have to  
14 be turned on by these things, that you have to be -- it has to be  
15 something that you are interested in. It's just whether or not  
16 you knew that you possessed it.

17 THE COURT: Right.

18 MS. SCHNEIDER-BATALLER: Your Honor, and I understand  
19 your point --

20 THE COURT: But that's the thing, the --

21 MS. SCHNEIDER-BATALLER: -- about --

22 THE COURT: -- knowledge. And that's what I -- when I  
23 listened to your opening statement, I wrote down the word  
24 knowledge because to me that sounds like --

25 MS. SCHNEIDER-BATALLER: That's one of the elements,



1 right.

2 THE COURT: -- that's the -- I get that that's one way  
3 to get that in. But that to me sounds like the Defense seems to  
4 be knowledge, you know, he didn't know what he was doing. If he  
5 did, he didn't understand that, whatever it may be. But I  
6 suspect that the fact that he's viewing these things for a  
7 specific reason would be quite probative in determining the  
8 intent, the motive, the knowledge for this possession.

9 MS. SCHNEIDER-BATALLER: I understand your point, Your  
10 Honor. I guess my point more was not so much that he -- just I  
11 guess the first part of that was perspective, that he has a  
12 completely different perspective. And I specifically talked  
13 about distribution --

14 THE COURT: Right.

15 MS. SCHNEIDER-BATALLER: -- that whether he could  
16 understand that portion, Your Honor. So I would just --

17 THE COURT: Okay.

18 MS. SCHNEIDER-BATALLER: -- state that for the record.

19 THE COURT: Okay. So I'll -- the court determines that  
20 as to that statement about that he masturbated to certain images  
21 of child pornography, of what the Government's going to propose  
22 is child pornography, the probative value is not outweighed by  
23 the prejudicial effect, and that it would go to show defendant's  
24 motive, intent, and knowledge to commit these offenses.

25 MS. SCHNEIDER-BATALLER: Your Honor, if I could just

1 clarify really quickly with the Government. My understanding is  
2 that that information was said to Agent Wilson. Is that correct?  
3 Not Agent Ferg. I don't have in my notes that he --

4 THE COURT: That's a good point.

5 MR. CAYTON: I believe he said it in both. I mean, in  
6 the --

7 THE COURT: That they're both there?

8 MR. CAYTON: For Agent Ferg he said that he masturbated  
9 to, and I can find the --

10 THE COURT: That will be apparent for whoever's  
11 testifying, right? I mean, they're --

12 MS. SCHNEIDER-BATALLER: Thank you.

13 (Pause)

14 MS. SCHNEIDER-BATALLER: Just to clarify, I believe  
15 that the only time that is mentioned with Agent Ferg is when he  
16 says that he did do that to content he understood was legal under  
17 the Supreme Court, under Supreme Court ruling. So nudist  
18 content, not any sort of child pornography content.

19 THE COURT: Mr. Cayton?

20 MR. CAYTON: Your Honor, he does go in through the  
21 interview, and these was things that I was going to get into in  
22 the interview with Agent Ferg too. He does talk about doing a  
23 lot of research on child pornography and grey areas and --

24 THE COURT: He being the defendant?

25 MR. CAYTON: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. CAYTON: and doing research on child pornography  
3 and his understanding of the nudist images were legal under  
4 Supreme Court ruling, and he was trying to stay within that grey  
5 area. He talks about -- Agent Ferg asked him at the end of the  
6 interview why would you get in the grey area, and he said I like  
7 being in the grey area.

8 So the defendant stated, and I quote, it was probably  
9 over a year ago, and that it had been to nudist content that was  
10 in the defendant's opinion legal under the Supreme Court.  
11 There's other parts of the interview where he describes his  
12 interpretation of what he was looking for was he was -- he  
13 believed that he was able to get certain nudist content under the  
14 Supreme Court.

15 THE COURT: Is he talking about children?

16 MR. CAYTON: He talks about nudist content involving  
17 children, yes.

18 THE COURT: My ruling would be the same then, that  
19 under 403, the prejudicial effect does not significantly outweigh  
20 the probative value that it would provide. Of course I'll give  
21 an instruction. What was the second statement? There's like  
22 five statements.

23 MR. CAYTON: I believe --

24 THE COURT: You guys are losing your comfort break, by  
25 the way. But go ahead.

1 MR. CAYTON: Sorry, Your Honor. I believe --

2 THE COURT: It's all right.

3 MR. CAYTON: I believe bullet number three is only to  
4 Agent Wilson.

5 THE COURT: Hang on. Let's go ahead and talk about all  
6 of them. What's two?

7 MR. CAYTON: Yes, Your Honor.

8 THE COURT: What's the second? The first one was the  
9 masturbation.

10 MR. CAYTON: No, two is what we -- the masturbation.  
11 The first one was involving his parents stated that they had  
12 found him downloading child pornography approximately ten years  
13 ago, and they told him to stop because he would get in trouble.  
14 And he refused.

15 THE COURT: He stated that? He's the one that said  
16 that? The defendant --

17 MR. CAYTON: No. So the parents, so both of the  
18 parents, when they were interviewed, they said that they had  
19 caught him either downloading it or an image that he had printed  
20 out of child pornography and that they had told him to knock it  
21 off, and he did not.

22 THE COURT: Okay. Let's pass -- let's move past that  
23 one because that's not going to come up yet, right?

24 MR. CAYTON: Right. That's why I skipped it earlier.

25 THE COURT: Oh, sorry. Sorry. My apologies.

1 MR. CAYTON: Okay. So two is the masturbation we just  
2 talked about.

3 THE COURT: You know your case better than I do. I  
4 guess I should let you try it.

5 MR. CAYTON: I appreciate your confidence, Your Honor.  
6 Number three is that the defendant preferred to look at images or  
7 videos of children between the ages of eight and ten years old,  
8 and if given the opportunity he would be willing to have sexual  
9 intercourse with a child as young as 12 or 13 years old. Those  
10 statements were made to Agent Wilson.

11 THE COURT: Ms. Bataller?

12 MS. BATALLER-SCHNEIDER: Again, Your Honor, I think  
13 this goes even further. This is even more irrelevant to the  
14 actual charge of whether or not he knowingly possessed or  
15 distributed these things. What he would do hypothetically with a  
16 child has nothing to do with the elements of what they have to  
17 prove for this offense, Your Honor. And it's just incredibly  
18 prejudicial in this case.

19 THE COURT: I agree it's prejudicial. This would come  
20 in for Ferg or Wilson?

21 MR. CAYTON: This would come in through Wilson, Your  
22 Honor. And I think that there are two parts to that. I  
23 understand the Defense's position on his willingness or desire to  
24 have sexual intercourse with a young child. I think that that is  
25 a different analysis than he prefers to look at images or videos

1 of children between the ages of eight and ten years old.

2 THE COURT: I agree. The court will allow -- did you  
3 have something else you wanted to say?

4 MS. BATALLER-SCHNEIDER: Just to add on to that, if  
5 that's okay. Your Honor, I'm not sure what the relevance of the  
6 actual age ranges is. There's no argument for us that these are  
7 not -- that there's not a specific age range or that there's a  
8 specific age range that he's interested in. We're not going to  
9 go there, Your Honor. So I don't know how that's relevant. This  
10 --

11 THE COURT: Well then -- well, I think it's very  
12 relevant in that the age of 12 years is stated repeatedly in the  
13 indictment. I think the -- just because the defense doesn't have  
14 an argument about it doesn't mean the Government doesn't have the  
15 right to try their case as well as the Defense.

16 And so here is what my thought is. I'll allow under  
17 403 balancing that he preferred to look at girls, little girls or  
18 little kids? I don't remember.

19 MR. CAYTON: Children between the ages of eight and ten  
20 years old was his --

21 THE COURT: Yeah, children between the ages of eight --

22 MR. CAYTON: -- preference.

23 THE COURT: -- and 12. I'll allow that under Rule 403.  
24 But I will not allow, at least unless the door is opened, that  
25 about having -- choosing to have sex with -- intercourse, excuse

1 me, with a child that age if allowed. That may come up later. I  
2 can see how it might not. Hopefully it won't. And I think there  
3 are ways not to have it come up and that door not to be opened.

4 And so, Mr. Cayton, does the Government have any  
5 question about what I'm not allowing?

6 MR. CAYTON: No, Your Honor. The Court is specifically  
7 not allowing any statements by the defendant regarding his desire  
8 to have sexual intercourse with a child.

9 THE COURT: And the first part of that that I am  
10 allowing, and the Court finds that under Rule 403 balancing that  
11 prejudicial effect does not substantially outweigh the probative  
12 value in showing motive, intent, and knowledge that I will not  
13 only of course give written instruction at the end of the case,  
14 but I'll give an oral instruction, as well.

15 What's your next statement? There's, like, five.

16 MR. CAYTON: Number four would only come in under Agent  
17 Wilson. And based upon the Court's previous ruling on number  
18 three, my assumption would be that that would not come in unless  
19 the door was open.

20 That is regarding him having contact with an  
21 approximately 12-year-old child while roughhousing at a church  
22 function. He didn't believe it to be sexual, but the child, he  
23 believed, did take it that way. My assumption is that would not  
24 come in without the door being opened.

25 THE COURT: Your assumption's correct. And so if you

1 all think any of that comes in under the last bifurcated ruling  
2 or this one, approach. Don't go there.

3 MR. CAYTON: Absolutely, Your Honor. And then number  
4 five is the defendant stated that he searched for nudist content  
5 specifically searching for children between the ages of eight and  
6 ten years of age. He also stated he had search terms such as  
7 PTHC which he knew was associated with child pornography.

8 THE COURT: I was going to ask. I saw your motion.  
9 What is PTHC?

10 MR. CAYTON: Preteen hardcore, Your Honor.

11 THE COURT: Preteen hard -- okay. I tried to come up  
12 with that in my mind what it might be. I could never --

13 MR. CAYTON: I'm glad you were not able to. Definitely  
14 don't Google it.

15 THE COURT: I didn't think about that.

16 Ms. Bataller?

17 MS. SCHNEIDER-BATALLER: I completely lost my train of  
18 thought. Pretty funny, I'll give it to him. Your Honor, I would  
19 just, to put it in context, what happened was -- and I mean, I  
20 can get this out through cross but it might be confusing to the  
21 jury. But Mr. -- Thomas never brought up PTHC. That was asked  
22 of him. He never said what it meant or anything like that. So I  
23 think that could be a bit confusing for the jury.

24 THE COURT: Okay. Okay. Well, are you bringing up  
25 something like PT -- it's something that was not ever said.



1 MR. CAYTON: Judge, so he was asked about it in the  
2 interviews if he had used common search terms such as things like  
3 PTHC, and he acknowledged that he had.

4 THE COURT: So he actually says that in the interview?  
5 He says PTHC, and he says I've used common terms like that?

6 MR. CAYTON: I've searched for almost everything I  
7 possibly could. And then he agreed, he nodded his head when he  
8 was asked about PTHC, Lolita, preteen hardcore, preteen softcore.  
9 He gave a non-verbal response to Agent Wilson.

10 MS. SCHNEIDER-BATALLER: That was Agent Wilson after he  
11 had already met with Agent Ferg. And Agent Ferg asked him have  
12 you heard of PTHC, and he just simply said yes.

13 MR. CAYTON: He acknowledged that he heard the term.

14 THE COURT: Okay. So I will allow that statement, as  
15 well. Having done a Rule 403 balancing, I do believe that the  
16 prejudicial effect, make not mistake, there is a prejudicial  
17 effect to all of this, does not substantially outweigh the  
18 probative value as it goes to motive, intent, knowledge, possibly  
19 lack of mistake or accident. I guess it would go to all those,  
20 all of these would. And I'll give an oral instruction, of  
21 course.

22 Now I propose -- Ms. Bataller, I'd like your input on  
23 this. I propose that once the witness is through testifying,  
24 that I give the instruction. However, I can do it -- there's a  
25 chance that he may be -- we may break for lunch and he may still

1 be on direct. I think I should likely give it then as well.

2 Are you -- do you want me to wait? You all think about  
3 that. I mean, you've got time to tell me.

4 MS. SCHNEIDER-BATALLER: Okay.

5 THE COURT: I'll have it ready by then even though he's  
6 not done. Just so I don't want them going to lunch thinking  
7 about it.

8 MS. SCHNEIDER-BATALLER: Right.

9 THE COURT: But then you all may be saying well, you're  
10 raising the red flag where we don't want it. I'll --

11 MS. SCHNEIDER-BATALLER: Right.

12 THE COURT: -- do whatever you'd like.

13 MS. SCHNEIDER-BATALLER: Okay.

14 THE COURT: Okay? You tell me.

15 MS. SCHNEIDER-BATALLER: We'll let you know, Your  
16 Honor.

17 THE COURT: Okay.

18 MS. SCHNEIDER-BATALLER: Thank you very much.

19 THE COURT: Thank you.

20 MS. SCHNEIDER-BATALLER: Do I have a brief moment to  
21 run to the --

22 THE COURT: Yeah, let's run. I need to, too.

23 MS. SCHNEIDER-BATALLER: Thank you.

24 THE COURT: So let's take five. I want Mr. Perkins to  
25 make sure he gets a break if he can.

1 MS. SCHNEIDER-BATALLER: Thank you.

2 THE COURT: Five minutes, and we'll be back in here.  
3 We won't keep this jury waiting any longer. Thank you all.

4 (Recess at 11:15 a.m./Reconvened at 11:22 a.m.)

5 (Outside the presence of the jury; defendant present)

6 THE CLERK: All rise.

7 THE COURT: All right. Everybody's back in, including  
8 Mr. Perkins. Mr. Cayton, Mr. Greenbaum, anything?

9 MR. CAYTON: Yes, Your Honor.

10 One brief issue that Agent Ferg brought to my  
11 attention. There is a small portion of the audio where he -- the  
12 defendant does -- they ask the defendant whether or not he has  
13 ever thought about touching a child. And he kind of mumbles on  
14 about it. He doesn't make any admissions.

15 And I'll just read from the agent's notes if that's  
16 okay. Any contact between him and any kids they asked him, and  
17 then a long pause. I don't do that with kids. In the past, done  
18 debates over different things.

19 Well, I do want to do this or not, if this is a --  
20 well, I do -- well do I want to do this or not. Is this of  
21 interest or not. Usually no. I've never done anything, it  
22 doesn't appeal to me.

23 We're trying to find that part of the audio to cut it  
24 out based upon the Court's prior ruling.

25 THE COURT: So don't just try. Find it and cut it out.

1 MR. CAYTON: That's the --

2 THE COURT: Okay.

3 MR. CAYTON: -- goal.

4 THE COURT: Now listen, I'm okay -- I'm assuming this  
5 video which is pretty long, I guess --

6 MR. CAYTON: This is audio only.

7 THE COURT: It's --

8 MR. CAYTON: Yeah.

9 THE COURT: Oh, it's audio only?

10 MR. CAYTON: Yes.

11 THE COURT: How long is that one?

12 MR. GREENBAUM: It's one hour, sir.

13 THE COURT: It's an hour long?

14 MR. CAYTON: Yes. So maybe if the Court's okay, we  
15 could go through direct and then when we get time for the audio  
16 we can take our break for lunch? Or I don't know --

17 THE COURT: That's fine.

18 MR. CAYTON: -- what the Court's preference is.

19 THE COURT: That's fine. As long as it's not, you  
20 know, 15 minutes from now. I mean, let's --

21 MR. CAYTON: My goal is to make it longer than that,  
22 Your Honor.

23 THE COURT: Okay.

24 MR. CAYTON: But I never make a guarantee.

25 THE COURT: And I'm okay -- I want to tell all the

1 attorneys, it's okay that if you all decide to explain why there  
2 are lapses in the audio or something like that, or video where  
3 there's no sound or something like that. Just a simple question  
4 of the witness basically, was this taken out by agreement of the  
5 parties or something like that. It makes it kind of non-  
6 nefarious all of a sudden. You know, but that's up to y'all how  
7 you try your case, both of you.

8 Anything else?

9 MR. CAYTON: No, Your Honor.

10 THE COURT: I'm glad you caught that. Thank you, Agent  
11 Ferg.

12 And, Ms. Bataller, Mr. Gorman, anything?

13 MS. BATALLER-SCHNEIDER: Nothing from us.

14 MR. GORMAN: No, Your Honor. Thank you.

15 THE COURT: Let's bring the jury in. Thanks. Agent  
16 Ferg, why don't you go ahead and come on up. And you just stand  
17 with the rest of us. And when we sit down, you stay standing.  
18 Okay?

19 (Jury in at 11:24 a.m.)

20 THE COURT: All right, thank you. Let's be seated.  
21 Mr. Cayton, your next witness is?

22 MR. CAYTON: Special Agent David Ferg, Your Honor.

23 THE COURT: Sir, could you raise your right hand,  
24 please?

25 DAVID FERG, GOVERNMENT'S WITNESS, SWORN

Ferg - Direct/Cayton

62

1 THE COURT: You may have a seat and adjust yourself.  
2 And Mr. Cayton, you may proceed whenever you're ready.

3 MR. CAYTON: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. CAYTON:

6 Q Can you please state your name and spell your last?

7 A My name is David Ferg. My last name is F-E-R-G.

8 Q And where are you employed?

9 A I'm currently assigned as a supervisor and special agent  
10 with Homeland Security Investigations in Alpine, Texas.

11 Q And how long have you been a special agent with Homeland  
12 Security Investigations?

13 A It's 11 years this month.

14 Q Congratulations on your anniversary.

15 A Thank you.

16 Q I want to direct your attention back to the fall of 2019.  
17 Where were you assigned at that point?

18 A I was assigned as a special agent to the office in Alpine,  
19 Texas.

20 Q So you were not a supervisor at that point?

21 A That's correct.

22 Q At any point between now and, or between September 2019 and  
23 now did you leave the Alpine office?

24 A Yes. I had a temporary assignment for 18 months to ICE HSI  
25 headquarters in Washington, D.C.

Ferg - Direct/Cayton

63

1 Q And when approximately did you leave for that?

2 A That was approximately October of 2020.

3 Q And around the fall of 2019, did you start an investigation  
4 into child pornography?

5 A Yes, I did.

6 Q Were you able to complete that investigation based upon the  
7 special detail you went on?

8 A I completed the investigative process. But there were  
9 still elements of the case that was ongoing.

10 Q So you weren't the case agent through the entirety of the  
11 case?

12 A That's correct.

13 Q And then directing your attention to the investigation you  
14 started in the fall of 2019, how did you begin your  
15 investigation?

16 A I located information on law enforcement database that  
17 indicated that an IP address located in Fort Stockton, Texas, had  
18 possibly made some downloads available to Agent Bonneau in the  
19 Rio Grande Valley area. And so I contacted Agent Bonneau to  
20 confirm that information to see if he actually had successfully  
21 made downloads from that IP address.

22 Q And after contacting Agent Bonneau, were you able to confirm  
23 whether or not there were downloads that were made?

24 A Yes. He made the downloads available to our computer  
25 forensics agents in El Paso who provided me with a copy so that I

Ferg - Direct/Cayton

64

1 could review them.

2 Q Now why didn't he send them directly to you?

3 A Well, because the content involved in that is contraband.  
4 And it's not something that we can just, you know, send across  
5 our work computers and we have to handle it carefully.

6 Q Now they -- the information or the data that you received  
7 from Agent Bonneau, did you review the content?

8 A Yes, sir, I did.

9 Q And what approximately was contained in what you received  
10 from Agent Bonneau?

11 A From what I found that had been provided to me, there were  
12 approximately 17 files that were functioning files of varying  
13 lengths that would open on a standard computer using your normal  
14 video software, video viewing software. And based on my training  
15 and experience, they appeared to be child pornographic materials.

16 Q And you said that there were 17 functioning files.

17 A Yes, sir.

18 MR. CAYTON: Your Honor, at this time I would request  
19 permission to play one small clip of one of the files.

20 THE COURT: Has that been introduced into evidence yet?

21 (No audible response)

22 THE COURT: So request is denied unless and until  
23 that's introduced.

24 MR. CAYTON: Your Honor, then I would offer into  
25 evidence a disc and mark it as Government Exhibit 33. Actually I



Ferg - Direct/Cayton

65

1 think I'm up to 40. So it would be 41. And it is a disc  
2 containing approximately ten videos and one picture file.

3 MS. BATALLER-SCHNEIDER: Your Honor, I'm just going to  
4 object as to foundation.

5 THE COURT: As to?

6 MS. BATALLER-SCHNEIDER: Foundation.

7 THE COURT: Agreed. Sustained. The objection is  
8 granted, sustained. Go right ahead, Mr. Cayton.

9 BY MR. CAYTON:

10 Q You say you reviewed these 17 files?

11 A Yes, sir.

12 Q Were there any filers that you believed to be child  
13 pornography?

14 A Yes, sir.

15 MS. BATALLER-SCHNEIDER: Your Honor, I'm going to  
16 object as that's a legal conclusion.

17 THE COURT: Sustained.

18 BY MR. CAYTON:

19 Q Were there any files that appeared to be child sexual abuse  
20 material to you?

21 A Based on my training and experience --

22 MS. BATALLER-SCHNEIDER: Your Honor, another objection.  
23 It's the same thing.

24 MR. CAYTON: The legal definition of child pornography,  
25 Your Honor.

Ferg - Direct/Cayton

66

1 THE COURT: I'll sustain the objection. Rephrase your  
2 question.

3 BY MR. CAYTON:

4 Q Were there any videos that were concerning to you in your  
5 investigation?

6 A Yes, sir, there were.

7 Q Why?

8 A In viewing the videos, they appeared to be involving  
9 underage individuals engaged in sexual activity.

10 Q Were there only underage individuals in these videos?

11 A No, sir. Some of the videos also included adults  
12 interacting with underage individuals.

13 Q Now you were present during jury selection on Friday,  
14 correct?

15 A Yes, sir, I was.

16 Q And you heard a description of a particular video by Defense  
17 Counsel?

18 A Yes, I did.

19 Q Do you remember what the basic description of that video  
20 was?

21 A I do remember the basic description. Yes.

22 Q Can you describe that for the jury today?

23 A Essentially it's a short, color video showing what appears  
24 to be a pre-pubescent naked male with an erect penis straddling a  
25 naked adult male with an erect penis. And the adult male is

Ferg - Direct/Cayton

67

1 masturbating himself against the pre-pubescent boy's penis.

2 Q And does the adult male ejaculate on the child?

3 A In the video, yes, he does.

4 Q Is this one of the videos that you received from Agent  
5 Bonneau?

6 A Yes, it was.

7 Q So this was one of the videos that was downloaded from the  
8 IP address you were investigating?

9 A Yes, sir.

10 Q Do you know what that IP address is?

11 A I do not know it off the top of my head, sir.

12 Q Would reviewing your notes or your records refresh your  
13 recollection?

14 A Yes, it would.

15 MR. CAYTON: With the Court's permission, can the  
16 witness refresh his recollection?

17 THE COURT: Yes, sir. Of course. You may approach.

18 BY MR. CAYTON:

19 Q Do you have a copy with you?

20 A I don't. If there are any ROIs in here, it would have it.

21 Q Let me take a step back. Did you do any subpoenas based  
22 upon the IP address?

23 A Yes, sir, I did.

24 Q And what was the purpose of those subpoenas?

25 A The purpose of the subpoena was to obtain what's called the

Ferg - Direct/Cayton

68

1 subscriber information. Basically the account holder, user of  
2 that specific IP address.

3 Q And did you say you had a copy of your ROI?

4 A Not with me, sir. No.

5 Q And the IP address that you were looking for, was it the IP  
6 address that was able to receive the downloads?

7 A Yes, sir.

8 Q pk and would reviewing your -- a copy of your report of  
9 investigation help you refresh your recollection?

10 A Yes, sir, it would.

11 MR. CAYTON: May I approach, Your Honor?

12 THE COURT: Yes, sir, you may.

13 BY MR. CAYTON:

14 Q Please don't testify off the document, just review it and  
15 look up when you're ready.

16 A Yes, sir.

17 Q Do you remember the IP address that you were investigating?

18 A Sir, 69.128.225.159.

19 Q And that's a standard IP address? It's that grouping of  
20 numbers like that

21 A Yes, sir.

22 Q So you said you did a subpoena to try to find subscriber  
23 information. Is that correct?

24 A Yes, sir. That's correct.

25 MR. CAYTON: Your Honor, I have what's been marked as

Ferg - Direct/Cayton

69

1 Government Exhibit 1 for identification. I'd like to show it to  
2 the witness.

3 THE COURT: Yes, sir.

4 MR. CAYTON: May I approach?

5 THE COURT: Yes, sir, you may.

6 BY MR. CAYTON:

7 Q Agent Ferg, I've just handed you what's been marked as  
8 Government Exhibit 1 for identification. Do you recognize that  
9 document?

10 A Yes, I do.

11 Q What is that document?

12 A This was the response that we received from the internet  
13 provider which was TDS Telecom in request to our -- to our  
14 request for subscriber information.

15 Q Did they also include a business record affidavit?

16 A Yes, sir, they did.

17 Q And how do you know that's what that document is?

18 A Because I received this myself. And I recognize it.

19 Q And is that the same IP address that you were investigating?

20 A Yes, sir.

21 MR. CAYTON: Your Honor, I'd offer into evidence  
22 Government Exhibit 1 for identification as Government Exhibit 1.

23 THE COURT: Ms. Bataller?

24 MS. BATALLER-SCHNEIDER: No objection.

25 THE COURT: Government's Exhibit 1 is admitted without

Ferg - Direct/Cayton

70

1 objection.

2 (Government's Exhibit 1 admitted into evidence)

3 BY MR. CAYTON:

4 Q Special Agent Ferg, based upon the subpoena you got, were  
5 you able to develop a target for your investigation based upon  
6 that IP address?

7 A Based in the information we received, we were able to  
8 identify a target location and attempt to identify anyone living  
9 at that location.

10 Q And where was the target location?

11 A The target location was a residential address. It was 404  
12 South Seals Street in Fort Stockton, Texas.

13 Q And after you received that address, what was the next step  
14 in your investigation?

15 A From there we started doing kind of our basic investigative  
16 checks. Based on the subscriber information, it had included the  
17 name John Perkins as the subscriber. So we did basic background  
18 on what we could find on Mr. Perkins and anyone else that we  
19 could discover living at that address.

20 Q As part of this investigation, did you do any surveillance  
21 at the address?

22 A Yes, sir. On multiple occasions I drove by that particular  
23 residence and either would stop for a brief -- brief times or  
24 just drive by.

25 MR. CAYTON: Your Honor, I have what's been marked as

Ferg - Direct/Cayton

71

1 Government Exhibit 2 for identification. May I approach the  
2 witness?

3 THE COURT: You may approach.

4 THE WITNESS: Which number?

5 MR. CAYTON: Number 2.

6 THE WITNESS: Yes.

7 BY MR. CAYTON:

8 Q So reviewing Government Exhibit 2 for identification, do you  
9 recognize this picture?

10 A Yes, I do.

11 Q And how do you recognize that picture?

12 A This looks like one of the photos that I would have taken  
13 during surveillance of the target location.

14 Q Why do you take photos of the target location?

15 A So I don't have to rely on my memory and we have documented  
16 what the house looked like and who may have been there at the  
17 time.

18 Q And this is a fair and accurate reflection of how the house  
19 looked when you were doing your surveillance?

20 A Yes, sir.

21 MR. CAYTON: Your Honor, I'd offer into evidence  
22 Government Exhibit 2 for identification as Government Exhibit 2.

23 MS. BATALLER-SCHNEIDER: No objection.

24 THE COURT: Government's Exhibit 2 is admitted without  
25 objection.

Ferg - Direct/Cayton

72

1 (Government Exhibit 2 admitted into evidence)

2 BY MR. CAYTON:

3 Q How many times did you go to that location and do  
4 surveillance?

5 A It was spread across a couple of months. I would say  
6 somewhere between six to ten times.

7 Q And what is the point behind doing surveillance when you  
8 have a target location?

9 A To identify who's living there, see if we can discern any  
10 sort of patterns of life, identify vehicles that might be there.  
11 We also start to consider things if we're going to be moving  
12 towards a search warrant as far as officer safety such as do we  
13 see dogs in the yard or other things like that.

14 Q And after -- what other investigative steps are you taking  
15 at this time?

16 A Based on the information that we had located, we also found  
17 that Mr. Perkins was a federal employee with the Department of  
18 Agriculture. And so part of that, knowing that each federal  
19 agency has their own it's called the Office of Inspector General  
20 or OIG, that has investigators tasked with investigating fraud,  
21 waste, and abuse related to the employees or programs of that  
22 specific agency.

23 We contacted the OIG office for Department of Agriculture  
24 just to basically give them notice about our investigation, and  
25 also to see if they wanted to participate.



Ferg - Direct/Cayton

73

1 Q Now when you're talking about Mr. Perkins, are you talking  
2 about the defendant or someone else?

3 A As far as the Department of Agriculture employee, that would  
4 be Mr. John Perkins, not the defendant.

5 Q Is that the defendant's father?

6 A Yes.

7 Q So after reaching out to OIG, what was the next  
8 investigative step you took?

9 A At that point, we continued to gather information, conduct  
10 surveillance until we felt that we had sufficient probable cause  
11 to seek a federal search warrant for the location.

12 Q And was a search warrant obtained?

13 A Yes, it was.

14 Q And was that search warrant executed?

15 A Yes, it was.

16 Q On what day was the defendant's house searched?

17 A That was on January 9th, 2020.

18 Q Prior to searching the house, did you try doing -- or prior  
19 to the house being searched, did you try to take any steps to  
20 ensure there would be minimal damage or minimal issues during the  
21 search?

22 A Yes, sir. Myself and the special agent with Department of  
23 Agriculture OIG interviewed both Mr. John Perkins and  
24 subsequently his wife, Elizabeth Perkins outside of their house  
25 to try to gather more information about what the situation was

Ferg - Direct/Cayton

74

1 inside the house before sending any agents in.

2 Q And while you had Mr. and Mrs. Perkins, was the search  
3 warrant executed?

4 A Yes, it was.

5 Q And were you present during the search warrant being  
6 executed?

7 A No, I was not.

8 Q At any point were you able to meet a Thomas Perkins?

9 A Yes, I was.

10 Q And how did you come to meet Thomas Perkins?

11 A After the initial clearance of the search warrant, he was  
12 brought over to the Texas DPS office where we were located, and  
13 we conducted an interview with him there.

14 Q And is Mr. Thomas Perkins in court today?

15 A Yes, he is.

16 Q Can you please identify him for the record?

17 A He's sitting at the defense table in a dark jacket with  
18 glasses and facial hair.

19 MR. CAYTON: Your Honor, I would ask the record reflect  
20 the identification of the defendant.

21 THE COURT: The record shall so reflect.

22 BY MR. CAYTON:

23 Q Now you said you came to interview the defendant,  
24 Mr. Perkins --

25 A Yes, sir.

Ferg - Direct/Cayton

75

1 Q -- Mr. Thomas Perkins? And prior to interviewing him, did  
2 you read him his Miranda rights?

3 A Yes, we did.

4 Q I'd ask you to flip to Government Exhibit 5 for  
5 identification.

6 A Yes, sir.

7 MR. CAYTON: May I have just a moment, Your Honor?

8 THE COURT: Yes, sir.

9 (Pause)

10 BY MR. CAYTON:

11 Q And what is Government Exhibit 5 for identification?

12 A This would be the standard form in English that our agency  
13 uses to advise individuals of their rights.

14 Q And are there any signatures on this form?

15 A Yes, there are.

16 Q Whose signatures are on this form?

17 A They're the signatures of Thomas Perkins, myself, and USDA  
18 OIG Agent Craig Butler.

19 Q And were you there when these signatures were made?

20 A Yes, I was.

21 MR. CAYTON: Your Honor, at this time I'd offer into  
22 evidence Government Exhibit 5 for identification as Government  
23 Exhibit 5.

24 MS. BATALLER-SCHNEIDER: No objection.

25 THE COURT: Government's Exhibit 5 is admitted without

Ferg - Direct/Cayton

76

1 objection.

2 (Government's Exhibit 5 admitted into evidence)

3 BY MR. CAYTON:

4 Q And after informing the defendant of his rights, did he  
5 agree to speak with you?

6 A Yes, he did.

7 Q I want to talk a little bit about your interview with the  
8 defendant. How did the interview begin?

9 A The interview began with us introducing ourselves, showing  
10 him our identification to assure him who we were. And then  
11 generally, we -- we move on to a little bit of kind of  
12 biographical information just to get to know the person and a  
13 little bit about their background.

14 Q Is this also called rapport building?

15 A Yes, sir.

16 Q What's the general purpose around it?

17 A The general purpose is to try to just build a little bit of  
18 trust and relationship with that person, a little bit of common  
19 ground, and also just to get to know a little bit more about them  
20 to -- to see where they're coming from.

21 Q At any point do you inform the defendant, or did you inform  
22 the defendant what he was being investigated for?

23 A Yes, we did.

24 Q And what did you inform him you were investigating him for?

25 A Actually at the very beginning of our interview when we

Ferg - Direct/Cayton

77

1 first sat down, we indicated just that we were there based on  
2 some computer activity that we had become aware of.

3 Q And when you told the defendant you were there about  
4 computer activity, did he have any response?

5 A He did. He immediately said there's a lot of stuff I've  
6 been meaning to get rid of.

7 Q Did that -- I'll move on. Did you attempt during your  
8 interview to ascertain the defendant's computer skills?

9 A Yes, we did.

10 Q Why?

11 A The potential violations or technology use in this case  
12 based on my training and experience require at least a little bit  
13 more than your basic user. I know before I began any of these  
14 investigations, I wasn't familiar with peer-to-peer, BitTorrent,  
15 anything like that. And so it's helpful to know what level a  
16 person may be at when we're talking to them.

17 Q When you asked about his technical skills, what if anything  
18 did the defendant say?

19 A He confirmed that he thought himself quite tech savvy. He  
20 confirmed that he graduated high school and had taken some  
21 college classes.

22 Q Did he -- did you ever ask him about his ability with  
23 computer hardware, different types of computers?

24 A I believe we did ask him generally what sort of devices he  
25 used, if he liked video games, things like -- of that nature.

Ferg - Direct/Cayton

78

1 Q And what if anything was his response?

2 A Yes. That he had multiple computers, laptops. He confirmed  
3 that he did play video games.

4 Q Did you ever attempt to ascertain his knowledge of peer-to-  
5 peer programs or BitTorrent, anything like that?

6 A Yes. We did ask him specifically if he was familiar with  
7 peer-to-peer and BitTorrent.

8 Q And what if anything was his response?

9 A He confirmed that he was. He gave a basic explanation of  
10 the way the system worked and confirmed that he had used that  
11 software in the past.

12 Q Did he talk about any particular peer-to-peer softwares that  
13 he used?

14 A He did specifically mention one called Tixati that he had  
15 used.

16 Q Now once you had ascertained that he understood about peer-  
17 to-peer or BitTorrent-type softwares, did you ask him about any  
18 searches he had done?

19 A We did ask him what sort of searches he would use for --  
20 while using the software, yes.

21 Q And what if anything was his response?

22 A In general, his responses were that he made very, very broad  
23 searches, sometimes as broad as just jpeg which is like a picture  
24 file, computer, things of that nature.

25 Q Did he say why he was searching for these broad searches?

Ferg - Direct/Cayton

79

1 A Basically said that he enjoyed searching, he enjoyed the  
2 downloading and uploading.

3 Q Did he talk about what he did with the material that he  
4 downloaded?

5 A He stated that he would -- that by basically the searches,  
6 he was collecting very large amounts of information, and that he  
7 would sort of weed through and determine what he wanted to keep  
8 and what he would want to get rid of.

9 Q Did he have a specific term he used for things he would want  
10 to get rid of?

11 A Undesirable content I believe was -- were some of his words.

12 Q Did he say how he got rid of undesirable content?

13 A Well, he stated that he had been intending to what's called  
14 secure delete things, but that he had not gotten around to it  
15 yet.

16 Q Did he say how long or how long he'd been intending to  
17 securely delete things?

18 A He told us he had approximately ten years worth of data that  
19 he had been intending to go through.

20 Q Did he tell you when he was planning on securely deleting  
21 this information?

22 A He did tell us that he had planned to get the software that  
23 very same day.

24 Q Now as you continued to interview him, did you tell him a  
25 little bit more of why you were there and what you were able to

Ferg - Direct/Cayton

80

1 find?

2 A Yes, we did.

3 Q And what did you tell him as far as why you were there and  
4 what you were able to find?

5 MS. BATALLER-SCHNEIDER: Objection, hearsay.

6 THE COURT: Can you repeat the question, please?

7 MR. CAYTON: What did you tell him on why you were  
8 there and what you were able to find?

9 THE COURT: Overruled.

10 THE WITNESS: We told him that we were there based on  
11 law enforcement having successfully downloaded images or videos  
12 from his IP address that contained child exploitation materials.

13 BY MR. CAYTON:

14 Q What if anything was his response?

15 A In general with his responses he frequently just said that  
16 it was a lot I had meant to get rid of.

17 Q Did he say about any techniques he used to prevent someone  
18 from finding out?

19 A He --

20 Q Or --

21 A He mentioned -- he reacted very surprised that anyone had  
22 been able to get any downloads from him. He stated that he had  
23 been using two or more VPNs for virtual private networks.

24 Q And did he say anything specifically regarding the idea that  
25 you were able to get a download from him/



Ferg - Direct/Cayton

81

1 A Again, he was quite surprised by that, and indicated that it  
2 must have been done in some sort of illegal fashion.

3 Q Do you know what a VPN is?

4 A I have a rudimentary understanding of VPN, yes.

5 Q But he said that he was using two different VPNs?

6 MS. BATALLER-SCHNEIDER: Your Honor, I'm going to  
7 object. That was not in evidence.

8 THE COURT: I'm sorry, the objection is?

9 MS. BATALLER-SCHNEIDER: That was not in evidence.

10 THE COURT: Sustained.

11 BY MR. CAYTON:

12 Q What did he say specifically regarding VPNs?

13 A Just that he was surprised that we had been able to get  
14 anything from him because he had been using two VPNs. We asked  
15 him why he would be using VPNs, and he said for security  
16 purposes.

17 Q So he seemed surprised over the idea that you would be able  
18 to get something because of these VPNs he was using?

19 A Yes.

20 Q Did you ever ask him to talk to you about how BitTorrent  
21 worked?

22 A Yes, we did.

23 Q And what if anything was his response?

24 A Basically -- he gave us a basic understanding, explanation  
25 that it was peer-to-peer software with multiple files being

Ferg - Direct/Cayton

82

1 shared and downloaded from other users.

2 Q Did he tell you whether or not he had any knowledge of  
3 sharing on BitTorrent software?

4 A I know that we told him specifically that we had been able  
5 to, and that is software had made these things available to  
6 download. And he stated that he should have disabled that  
7 feature.

8 Q Did he talk about what if any content he was sharing?

9 A As far as content that was being shared, he stated that it  
10 was none of his own content, but indicated that things that he  
11 had downloaded may have been available for sharing.

12 Q Now through this interview that you're having with him, is  
13 it a linear interview? Are you guys kind of bouncing back and  
14 forth? How were you going through the interview?

15 A There was definitely some kind of bouncing back and forth as  
16 topics came up and as we were able to stay on focus.

17 Q Did you continue to talk to him about the facts that agents  
18 had been able to download material from him?

19 A We did mention that on several occasions, yes.

20 Q And what was his response each time?

21 A Just continuing to be kind of incredulous that that had  
22 happened.

23 Q Now going -- stepping away from downloading, at any point  
24 did you talk to him about if he was ever searching for specific  
25 material?

Ferg - Direct/Cayton

83

1 A Yes, we did ask him multiple times to try to clarify exactly  
2 which sort of search terms or what sort of content he was looking  
3 for.

4 Q Did he talk to you about any search terms he used?

5 A He was quite evasive about any sort of terms. He  
6 specifically said I'm only going to speak in general terms and  
7 not -- not give you any specifics.

8 Q Did he ever talk about researching what he could and could  
9 not download?

10 A Yes, he did.

11 Q And how did this topic come up?

12 A So this was kind of in relation to when we had mentioned --  
13 actually, we were discussing child pornography. And I asked him  
14 what does child pornography mean to him, what is his  
15 understanding of it. And he indicated that he had been doing his  
16 own research. And based on his understanding that there had been  
17 a Supreme Court ruling that if there was only nudity involved but  
18 nothing else that that was legal to view and possess.

19 Q So as you continued to talk to him about what he's searching  
20 for, does he ever talk about this nudity again?

21 A Yes. He did bring it up fairly often that what he called  
22 nudist content was what he preferred.

23 Q Did he ever talk about a particular age range or type of  
24 nudity content that he liked?

25 A Not that I recall in our interview.

Ferg - Direct/Cayton

84

1 Q Did you ever talk to him about what you might find if you  
2 searched his devices?

3 A Yes, we did.

4 Q And what if anything was his response to those questions?

5 A Again, it was generally repeating that there were lots of  
6 things that he intended to get rid of.

7 Q Did you ever ask him what he did with the content outside of  
8 it being on the computer?

9 A I don't recall at this time.

10 Q Did you ever ask him if he was aroused by the content?

11 A Yes, we did.

12 Q And what if anything was his response?

13 A He indicated that he would be aroused by the nudist content  
14 that he had.

15 Q Did he ever tell you if he would do anything based upon  
16 being aroused by the content?

17 A We did ask him specifically if he masturbated while watching  
18 the content. And he confirmed that he had in the past.

19 Q Did he say what type of content specifically he masturbated  
20 to?

21 A Just nudist content were the terms that he would use.

22 Q Did you ask him about any known child pornography search  
23 terms?

24 A Yes, we did.

25 Q And what specifically did you ask him in regard to known

Ferg - Direct/Cayton

85

1 child pornography search terms?

2 A I specifically asked him about PTHC which I know stands for  
3 preteen hardcore and is a common term that is used to locate  
4 child exploitation materials.

5 Q Did he tell you whether or not he was familiar with that  
6 term?

7 A He told me that he did know what that stood for.

8 Q Did he tell you if he had ever used that search term?

9 A He would not confirm that.

10 Q Did you ever talk to him about the concept of possession and  
11 distribution?

12 A Yes, we did.

13 Q In regards to possession, what if anything was his response  
14 when you were speaking to him about possessing material?

15 A He grew quite frustrated with us that we kind of continued  
16 to talk to him about -- he just continued to say that there was  
17 stuff he wanted to get rid of, that he needed more time to get  
18 rid of it. And we explained to him that even if he was intending  
19 to get rid of it, he was still possessing the material at that  
20 time.

21 Q Did he have any response after you explained that to him?

22 A I believe he did say that again that was more that he should  
23 have gotten rid of, and that -- that's all I recall for the  
24 moment.

25 Q In regards to distribution, did he tell you whether or not

Ferg - Direct/Cayton

86

1 he knew that he was sharing material?

2 A After we made that known to him that law enforcement had  
3 been able to, he did state that he should not have had that  
4 option selected.

5 Q The option to share?

6 A Yes.

7 Q So he acknowledged to you that he was sharing?

8 A Yes.

9 MS. BATALLER-SCHNEIDER: Objection to that, Your Honor.  
10 I'd move to strike. That was a leading question.

11 THE COURT: Sustained to the leading question. I'll  
12 strike the question and the answer, and the jury will disregard.  
13 Go ahead, Mr. Cayton.

14 BY MR. CAYTON:

15 Q Did you ever ask him whether or not he knew he was sharing?

16 A Yes. I believe we did.

17 Q And what if anything was his response?

18 A I believe that he acknowledged that he recognized that his  
19 software was sharing.

20 Q Did you ask him when the last time he downloaded material  
21 was?

22 A Yes, I believe we did.

23 Q And what if anything was his response?

24 A I believe he had stated that it was a few months prior. And  
25 this again was in January of 2020.

Ferg - Direct/Cayton

87

1 Q Did he say why?

2 A Can you clarify the question?

3 Q Did he say why the last time he downloaded was a few months  
4 prior?

5 A I believe he indicated that all of his devices and hard  
6 drives were basically full, and so that he had sort of stopped  
7 since then.

8 Q Now did you ever ask him whether or not anyone on the  
9 household was involved in downloading this type of material?

10 A He specifically mentioned to us that his parents were not  
11 involved in anything else, in anything related to this.

12 Q Now after you interviewed him, you stated that at some point  
13 you went on a temporary duty?

14 A Yes, sir, that's correct.

15 Q Were there any other investigative steps that you took  
16 before you went on that temporary duty?

17 A At that point investigative stage was essentially completed.  
18 I do remember one specific request that I made to our computer  
19 forensics agent in El Paso, Tony Yanez.

20 Q And what was that request?

21 A That request was I provided him with the information, the  
22 file names and descriptions that I had received from Agent  
23 Bonneau and asked Agent Yanez to search the devices that had been  
24 seized from the search warrant to see if he could find any of  
25 those same files.

Ferg - Direct/Cayton

88

1 Q And did Agent Yanez ever get you a response?

2 A Yes, he did. He confirmed that of the 17 files that I had  
3 received, he found approximately 15 of them on the devices seized  
4 from the Perkins' residence.

5 Q And did you ever get a chance to review the evidence from  
6 the devices that were seized from the Perkins' residence to  
7 confirm that?

8 A Yes, sir. I have reviewed some of the videos.

9 Q Now that video we spoke about a little bit earlier about an  
10 adult male with a male child on his lap while the adult male is  
11 masturbating, were you able to locate that on one of the hard  
12 drives --

13 A Yes, sir. CFA --

14 Q -- seized from the residence?

15 A CFA Yanez was able to locate that on I believe two different  
16 devices.

17 Q And did you review that video based upon the computer  
18 forensics analysis that was conducted?

19 A Yes, I have reviewed it since then.

20 Q So just to be clear, you reviewed it when you got the  
21 original evidence from Agent Bonneau, and then you reviewed it  
22 again based upon the evidence you received from the drives?

23 A Yes, sir. That's correct.

24 Q Was the video the same video that you had seen months  
25 earlier in your investigation?



Ferg - Direct/Cayton

89

1 A Yeah. And as far as I could tell, yes, it was the same.

2 MR. CAYTON: May I have a moment, Your Honor?

3 (Pause)

4 MR. CAYTON: Your Honor, at this point I would request  
5 permission to publish Government Exhibit 1, 2, and 5 to the jury.

6 THE COURT: You may. Why don't you pull this flat  
7 screen, can we pull it back around where they can see it? Thank  
8 you. Thank you. So you ought to have two screens to look at.  
9 You can go to your right, or you could look straight ahead.

10 BY MR. CAYTON:

11 Q Now, Agent Ferg --

12 THE COURT: I'm going to have to get you on the  
13 microphone. You're going to have to get closer than that. You  
14 talk softer than my wife.

15 MR. CAYTON: My wife says the same thing, Your Honor.

16 THE COURT: You need to speak up.

17 BY MR. CAYTON:

18 Q Agent Ferg, can you see this document?

19 A Yes, I can.

20 Q Is this Government Exhibit 1, the certification of business  
21 records?

22 A Yes, it is.

23 Q This is why they don't let lawyers touch things. Can you  
24 move to the second page? And do you recognize this document?

25 A Yes, I do.

Ferg - Direct/Cayton

90

Q And is that the subpoena return that you received from TDS?

A Yes, it is.

Q And that confirms the subscriber information?

A Yes.

THE COURT: Now is this one going to pop up too,  
Mr. Cayton? Is it just trying? There we go. Thank you.

MR. CAYTON: Now, Your Honor, I'd like to publish  
Government Exhibit 2.

BY MR. CAYTON:

Q And, Special Agent Ferg, is this the house you were doing  
surveillance on?

A Yes, it is.

Q And is this the Perkins residence?

A Yes.

Q And is this the only picture you took?

A No. I took multiple pictures.

Q But for reference, this is the house that you ended up doing  
a search warrant on?

A Yes, sir.

Q Now Government Exhibit 5. And, Special Agent Ferg, can you  
see this document?

A Yes, I can.

Q Is this the rights advisement that you gave the defendant?

A Yes, it is.

MR. CAYTON: And, Your Honor, at this point we may be

Ferg - Direct/Cayton

91

1 at a good stopping point.

2 THE COURT: I'll have the attorneys approach. Y'all  
3 feel free to stand if you'd like for a moment. This won't take  
4 long.

5 (Bench conference at 12:06 p.m.)

6 THE COURT: Outside the presence of the jury. All  
7 right. So how much more do you have on him? Are you going to  
8 play --

9 MR. CAYTON: This is where I'd like to play the audio.  
10 And that would pretty much be the end of him.

11 THE COURT: How long is that going to take?

12 MR. CAYTON: (Indiscernible) snip that part out or to  
13 --

14 THE COURT: Is it not ready to go yet?

15 MR. CAYTON: No.

16 THE COURT: How long is it going to take to play it  
17 once you play it? And if you had it ready right now, how long  
18 would it take?

19 MR. CAYTON: Approximately 45 to 50 minutes.

20 THE COURT: Okay.

21 MR. CAYTON: We were going to snip out the last ten  
22 minutes and then just --

23 THE COURT: Okay.

24 MR. CAYTON: -- this little portion.

25 THE COURT: All right. Well, it sounds like this is

Ferg - Direct/Cayton

92

1 the best place for a break. When that comes back, that brings me  
2 back to my question of you. It seemed to me like you really  
3 haven't gotten anything yet done. You're good?

4 MS. BATALLER-SCHNEIDER: No, we can wait.

5 THE COURT: Okay. I'll wait till --

6 MS. BATALLER-SCHNEIDER: Yeah, that's fair. Thank you,  
7 Your Honor.

8 THE COURT: I'll wait till after he's completely  
9 finished and about to get off the stand unless you want it after  
10 his direct, and you can tell me that later.

11 MS. BATALLER-SCHNEIDER: I'll let you know, Your Honor.

12 THE COURT: Just trying to think which would be best.  
13 Y'all can decide.

14 MS. BATALLER-SCHNEIDER: Yeah. We'll discuss that.

15 THE COURT: Okay. Thank y'all.

16 MS. BATALLER-SCHNEIDER: Thank you.

17 (Bench conference ends at 12:07 p.m.)

18 THE COURT: So, ladies and gentlemen of the jury,  
19 there's some things I've ordered the attorneys to do for -- in  
20 preparation of the next step in the case with this witness. And  
21 I've got to give them time to do that. You'll understand later.  
22 So I'm going to have you go to lunch.

23 This is earlier than I meant to, but only because it's  
24 the best time to do it. We'll just waste your time for the next  
25 20 minutes if I was trying to get to 12:30. So tomorrow I'll try

Ferg - Direct/Cayton

93

1 to make the 12:30. You know, that's my plan. I don't want you  
2 to have a lot of trouble.

3 You're going to leave your juror badges here in the  
4 chair, or in the jury room. Just don't take them to your vehicle  
5 and then remember because then you'll forget when you come back.  
6 When you come back from lunch, we've got to have all of you.

7 So don't think oh, I know -- they can get started  
8 without me. I know I'm late but they can get started without me.  
9 We can't. We've got to have all of you, and they've got to have  
10 me. So the 15 of us, you know, are important regardless of what  
11 my wife says. I am important for that one moment.

12 So you can go to lunch. You can go to lunch together  
13 if you want. You don't have to, but you're welcome to. Just  
14 don't talk about anything about the case. I always joke that  
15 don't even talk about how good looking the judge is. And that's  
16 a -- I know that's a joke. I know, the men are all shaking their  
17 heads.

18 But the reason I say it is if you don't say anything,  
19 and the anything no matter how silly it might be about the trial,  
20 you don't get started talking about the trial either if you're  
21 with each other or somebody else because if you're like me, I can  
22 just say oh yeah, well that one lawyer's really smart or  
23 whatever. And the next thing I know, I'm talking about the case.  
24 And so I don't want you going there. I'm just trying to help  
25 prevent that from happening.

Ferg - Direct/Cayton

94

1           You'll leave your notebooks in here. You'll get sick  
2 of me saying that. I'm going to give you about an hour and a  
3 half. So you'll be back -- if you'll be back about 1:35 or 1:40,  
4 we will start no later than 1:40. Cristina, is that right?

5           THE CLERK: Yes, sir.

6           THE COURT: It's an hour and a half. Okay. I misread  
7 the clock one time a few years back, and we gave everybody, like,  
8 two and a half hours for lunch. And later I was asking  
9 Ms. Lerma, I was like where is everybody. And she said you gave  
10 them all -- you told them -- I misread the clock. That's what I  
11 -- yeah. I learned how to tell time when I was a little boy, and  
12 I misread the clock. So I always ask her now.

13           Until the trial's over, you're not to discuss the case  
14 with anyone including your fellow jurors. If anyone approaches  
15 you and tries to talk to you about the case, advise me about it  
16 immediately. Do not read or listen to any news reports of the  
17 trial or use any technology tools to do independent research.

18           Don't post on social media, please. We've not ever had  
19 any problems with that here. There have been problems elsewhere  
20 in the nation. And there's no reason for that. The people who  
21 know -- you have the -- I don't know if it's the luxury, the  
22 benefit of having the weekend to tell people, your loved ones,  
23 your employers, people like that that you had jury duty.

24           So if you have to tell anybody during lunch, just tell  
25 them that. If anybody asks you -- we all know in this day and

Ferg - Direct/Cayton

95

1 age that you can't talk about it. Everybody knows that. You can  
2 tell them after the trial's over, the Judge tells me that I can  
3 give you a full download. You know, that usually puts -- you  
4 know, okay, okay, I'll talk to you about it later. And you'll be  
5 free to do that once you're released from your oath.

6 Finally, don't speak with anyone in or around the  
7 courthouse or your fellow jurors -- other than your fellow jurors  
8 and the court personnel. So I if see you, I'm going to say  
9 hello. I'd like you to say hello.

10 If an attorney sees you, you're passing in the hallway,  
11 you're passing on the sidewalk, typically the lawyer is going to  
12 look the other way. They're not trying to be rude. They're  
13 trying to make sure because you may just be saying hello, good  
14 afternoon, I hope you had a good lunch, whatever. And it's  
15 really, there's nothing harmful about that.

16 But somebody who can't hear you but can see you talking  
17 won't know what you said. And so they'll sometimes think oh,  
18 that doesn't look good. And so just to keep the appearance of  
19 impropriety at bay, we don't do that. And so the lawyers aren't  
20 trying to be rude. They're trying to follow my ruling, my orders  
21 that they not look at you and not talk to you.

22 I'll be offended if you don't say hi to me. So, but  
23 for them, let's keep it that way, or anybody else that you know,  
24 you've come to realize has a part in the trial.

25 Remember most importantly to keep an open mind until

Ferg - Direct/Cayton

96

1 all the evidence has been received. When it's been received and  
2 you're about to go deliberate, I'll tell you. Now you've got the  
3 case, it's yours. I'll make sure you know that. You've not  
4 received it yet. We're going to have a number of stops and  
5 starts and breaks, and I want to make sure you know that.

6 So talk about the Cowboys, how good they're going to be  
7 next year. It's always next year, right, or whatever. That's  
8 what I always think. But don't talk about this, okay?

9 With that, any questions? You all good? All right.  
10 And we're going to stay and work because you'll find that most of  
11 the time when y'all, especially when you leave the building,  
12 we'll stay and work a little bit. And I'll bring them back early  
13 so that we're not in your way in the hallway. You know, there's  
14 a reason for all that. But we also have other work we can do and  
15 keep you all from having to wait on us.

16 So I'll see you back here at 1:40. We're going to  
17 start right then. Let's rise for this jury. Have a good lunch,  
18 y'all. And don't forget to come back.

19 (Jury out at 12:13 p.m.)

20 THE COURT: Let's have a seat, please. Outside the  
21 presence of the jury. All right. So, Mr. Cayton, as to your  
22 request the first time, when you went to retrieve the document,  
23 you didn't ask. Please ask permission to approach. I think that  
24 was just an oversight. I didn't want you thinking once I get  
25 permission, I can go.



Ferg - Direct/Cayton

97

1           On publishing, if you'll ask my permission the first  
2 time, then for the rest of the trial whoever wants to play it can  
3 play it. But just let me know.

4           I had one time a -- I thought we had it clear, and I  
5 think it was a pro se civil case, a pro se defendant. I thought  
6 we had it clear, and he -- and I was working and wasn't looking  
7 up. And he already -- he put something up that was not supposed  
8 to be up. And I just -- that's why I do that. I'm very  
9 regimented about that. I want to make sure that nobody is  
10 unfairly prejudiced by anybody else.

11           Mr. Cayton and Mr. Greenbaum, anything you want to take  
12 up or we need to take up outside the presence, or anything we  
13 need to come back early for?

14           MR. GREENBAUM: Judge, I just wanted to bring one  
15 simple housekeeping thing up. I believe that one of our next  
16 witnesses, or soon to be called witnesses is going to be evidence  
17 custodian.

18           THE COURT: Okay.

19           MR. GREENBAUM: The reason why I bring that up is  
20 there's actual physical evidence here like laptops, computer like  
21 the desktops in addition to devices. Would it be okay with the  
22 Court's permission if I go ahead, I set up a table here, if I go  
23 ahead and put them over there now, or should I just have them try  
24 to lug them in when he comes and testifies.

25           It's just normally if it's just a few things, I just

Ferg - Direct/Cayton

98

1 have them lug it in. But if the Court's preference is just to  
2 have them bring it in groups or whatever, I could do that, Judge.

3 THE COURT: Is there a table up here?

4 MR. GREENBAUM: I did. I set up a little one --

5 THE COURT: Oh, you did?

6 MR. GREENBAUM: -- with Ms. Lerma's permission, Your  
7 Honor.

8 THE COURT: Ms. Bataller, do you or Mr. Gorman have --  
9 I mean, they're going to be -- if they're hard drives, they're  
10 not going to be really identifiable. I mean, it's not going to  
11 be prejudicial just in and of itself by viewing it. Anything  
12 that would be, Mr. Greenbaum?

13 MR. GREENBAUM: No, Judge. The --

14 THE COURT: A big Uzi or anything like that?

15 MR. GREENBAUM: I'll look at it briefly, but it's just,  
16 it's basically, it's just your CP units, Your Honor. So there's  
17 nothing like -- there's nothing --

18 UNIDENTIFIED SPEAKER: CBUs.

19 (Multiple parties speaking)

20 MR. GREENBAUM: Yes. Thank you for that, yes. Just  
21 your standard computers, Judge. So there's nothing, there's  
22 statements or anything like that, or stickers or anything like  
23 that --

24 THE COURT: Any objection?

25 MR. GREENBAUM: -- that I'm aware of.

Ferg - Direct/Cayton

99

1 MS. BATALLER-SCHNEIDER: No objection. I guess the  
2 only thing I would ask is the relevance of having the actual  
3 physical devices.

4 MR. GREENBAUM: Sure, Judge. It's part of our  
5 elements, part of the elements that's alleged is specifically to  
6 the actual physical evidence.

7 THE COURT: There's no objection. You can put them --  
8 I tend to agree with her, but you know, I'm not going to try your  
9 case for you.

10 MR. GREENBAUM: Yes, Your Honor.

11 THE COURT: You both get to try your case. So if you  
12 want to show that stuff and make it -- that's fine. Anything  
13 else?

14 MR. GREENBAUM: No, Your Honor. That was it.

15 THE COURT: Ms. Battaller?

16 MS. BATALLER-SCHNEIDER: No, Your Honor. Thank you.

17 THE COURT: Thank you all very much. All right. So  
18 let's get back here at 1:30 in case something comes up. And if  
19 it does, Ms. Salas will be here. You let her know that we need  
20 to talk about something before the jury gets in here. That way  
21 we're not waiting 'til I get here at 1:40 and then you go now we  
22 need to talk about something. Okay? Let's do that.

23 You have a good lunch though. Okay, Mr. Perkins?  
24 We're going to get you fed. Thank you all.

25 (Recess at 12:16 p.m./Reconvened at 1:29 p.m.)

Ferg - Direct/Cayton

100

1 (Outside the presence of the jury; defendant present)

2 THE COURT: All right. So we're outside the presence  
3 of the jury. All the parties are here including the defendant.  
4 Go ahead and have a seat. We'll bring in a -- jurors. I've been  
5 told by Ms. Baisa (phonetic) that during the lunch break, outside  
6 the presence of any other jurors -- and, Ms. Baisa, this was  
7 outside -- none of the other jurors heard this, right? Okay.  
8 Good. That was my impression.

9 Juror number 12 is a Jessica Garcia (phonetic). And  
10 she was somewhat upset during lunch, the lunch break, and told  
11 Ms. Baisa that she didn't feel like she could continue on with  
12 this subject matter in the trial.

13 What I propose to do, I've had her, Ms. Baisa sat her  
14 across in the jury assembly room. So she's been sequestered from  
15 the rest of the jurors. And I'll bring her in and have her speak  
16 to me from the podium. And then I'm not going to ask the  
17 attorneys if they have questions. I'm going to talk to her. And  
18 then I'll excuse her.

19 And then if y'all have specific questions you just  
20 can't live without, you may ask them and we can talk about it.  
21 Let's talk about it once we get the lay of the land kind of with  
22 her. I don't want her to be upset, but I want her to -- we need  
23 to confront this now because this is only going to get more  
24 intense I think as we go.

25 Let's bring her in. And, ma'am, if you'll escort her

Ferg - Direct/Cayton

101

1 on up here to the podium. There's tissues up there.

2 UNIDENTIFIED SPEAKER: I don't know if there's any up  
3 there.

4 UNIDENTIFIED SPEAKER: Oh, we have some. We have some.

5 THE COURT: Yeah, that would be great. Thank you  
6 anyway.

7 Yes, hi. Come on up. You come on up to this podium  
8 right here. Hi. And the attorneys can go ahead and have a seat,  
9 please, if you would.

10 JUROR NO. 12: Yes, sir. I --

11 THE COURT: Hi.

12 JUROR NO. 12: Hi, Your Honor.

13 THE COURT: Just for the record, we're outside the  
14 presence of the jury. We have Juror number 12 here with us.  
15 And, ma'am, I was told by Ms. Baisa a few minutes ago --

16 JUROR NO. 12: Yes, sir.

17 THE COURT: -- that you're struggling during lunch,  
18 during the lunch break.

19 JUROR NO. 12: Yes, I am.

20 THE COURT: And I've spoken with her about concerns  
21 about going forward. Is that right?

22 JUROR NO. 12: Yes, that's correct.

23 THE COURT: Okay. And is that based on what you've  
24 heard thus far this morning?

25 JUROR NO. 12: Yes. Just the whole -- the whole thing

Ferg - Direct/Cayton

102

1 in general --

2 THE COURT: Okay.

3 JUROR NO. 12: -- is just awful. And I tried my best.  
4 That's why I was here today. I tried my best. But I, honestly,  
5 I can't. It's too much.

6 THE COURT: Okay. What does that mean exactly, too  
7 much?

8 JUROR NO. 12: Like, I get really bad anxiety.

9 THE COURT: Okay.

10 JUROR NO. 12: So I just, it's just awful for me to  
11 hear.

12 THE COURT: Okay.

13 JUROR NO. 12: And it makes me sick.

14 THE COURT: Sure. Well, keeping in mind that under  
15 your juror's oath which I know you've been sworn a couple of  
16 times now --

17 JUROR NO. 12: Yes, sir.

18 THE COURT: --right? The Friday and today. You're to  
19 keep an open mind. You're to -- the juror's oath is real simple.  
20 I know it's --

21 JUROR NO. 12: Yes.

22 THE COURT: -- longer than this, but all it is is that  
23 you swear to keep an open mind, that you swear to listen to the  
24 facts and the evidence and apply the law. That's really all  
25 anybody can do.

Ferg - Direct/Cayton

103

1 Let me tell you a couple of things. I always look at a  
2 case like this, this is a tough subject matter for anybody. If  
3 you think this is easy for anyone, including the lawyers here,  
4 Mr. Perkins of course, and anybody, staff, if you think it's easy  
5 for anyone because of the subject matter, you're just incorrect.

6 If you think that any of us have any special fortitude  
7 that we've been granted by God to get through this, you're wrong.  
8 You're incorrect. I would suggest that you're just not correct.  
9 So that tells me we're all in the same level, plateau, playing  
10 field here.

11 I always think of it as my mom, if my mom were here as  
12 a juror, how difficult this would be for her. Here's the thing.  
13 That doesn't make it -- though it's difficult for everyone, the  
14 fact that it's difficult for you doesn't make it easier for  
15 someone else.

16 JUROR NO. 12: Yes.

17 THE COURT: It's not like, you know, I'm a big, tough  
18 guy and I just, I can handle it better than you can. I can't.  
19 I'm not a big, tough guy and I can't handle it any better than  
20 you can. We have to sometimes catalogue these things.

21 And I will tell you that I suspect, and in listening to  
22 the evidence, that it's going to get more intense, I would say.  
23 I won't say worse or better or anything like that because I can't  
24 judge that, not knowing what the evidence is. I haven't seen it  
25 either. You and I are in the same position.

Ferg - Direct/Cayton

104

1 I don't know what the evidence is. The parties know  
2 the evidence, the parties are prepared. I come in and preside  
3 over the trial. I don't prepare or anything like that. And I  
4 don't have a side.

5 There have been cases in the past very similar to this  
6 where when there are things, and there are going to be some  
7 things shown, there are going to be some things in audio  
8 recordings, I think, that you're going to need to look at and  
9 decide as a juror. You're the fact finder, the judge of the  
10 facts. You've got to look at it, listen to it, put it all  
11 together to see if, you know, you think -- how you want to vote,  
12 how do you want to decide.

13 That's up to you completely. I just will tell you  
14 this. We have two alternates. And if you step out and I go  
15 okay, well this upsets you and so I can't allow you to -- I don't  
16 want you to stay, I'll have you leave, what do I do when the next  
17 person says the same thing.

18 JUROR NO. 12: Yes, I understand.

19 THE COURT: You understand? Does that make sense?

20 JUROR NO. 12: Yes. Yes.

21 THE COURT: It's very difficult. And we only have two  
22 alternates. So if we lose one now, we've only got one more.  
23 What if somebody gets sick, you know, this COVID stuff, with --  
24 it's not the common flu season, but somebody might have a heat  
25 stroke because it's hot as the dickens out side.



Ferg - Direct/Cayton

105

1 But, or I've had instances where someone's spouse had  
2 to have emergency surgery, or anybody on the jury, somebody's  
3 family member, they had to be gone and we lost them. So it's  
4 critically important to us because one other thing I'm going to  
5 tell you. If I were -- well, I am a citizen so this matters to  
6 me. But even if I were the accused, it would matter to me as  
7 well.

8 We want -- we don't want the Government, you don't want  
9 me, judges, making these decisions for us. You know, this is one  
10 of the very few places on Earth where you'll have citizens  
11 actually making decisions of this import, of this nature. And  
12 that's what the whole system's built on, which is just an  
13 amazing, you know, experiment to begin with.

14 But that doesn't mean they're all pleasant, doesn't  
15 mean they're all easy. I will say you went through -- I'll say  
16 this. I believe, and I wasn't here Friday. I was elsewhere at a  
17 meeting, and so Judge Fannin presided over the jury selection. I  
18 believe that the 14 people, the 12 plus the two alternates, have  
19 the confidence of these attorneys.

20 These are very seasoned and good attorneys. I don't  
21 know if he explained to you, we don't select our juries. We  
22 don't get to say yeah, I want him and I want her and I want --  
23 like kickball, playing kickball on the playground when I was a  
24 kid. We would select up, somebody would get to be captain, two  
25 captains would get to pick their teams.

Ferg - Direct/Cayton

106

1           We don't get to do that. What we do is we have  
2 strikes. And the lawyers strike those who they think, you know,  
3 there's usually nothing wrong with those folks, but they might be  
4 better off serving on other juries, different -- so I can tell  
5 you this right here, these lawyers, I believe, since you're here  
6 and you haven't been challenged or you haven't been stricken,  
7 they have full faith and confidence that you're going to sit and  
8 make a good decision.

9           Are there times when in different cases, these and  
10 other types of homicides, things like that where you're having to  
11 look at video, audio, listen to audio, look at pictures, hear  
12 descriptions of things where you're kind of sitting there, you  
13 know, hearing what you got to hear, absolutely. Everybody is the  
14 same way.

15           I don't want you to feel like you're any different than  
16 anyone else. You're not. Everybody's the same when it comes to  
17 anything along those lines. Rarely -- I did a naturalization  
18 ceremony over in at Fort Davis about a week and a half, coming up  
19 on two weeks ago now. And I've done a bunch of those. I love --  
20 because everybody's smiling.

21           Rarely in a criminal case, and especially not in a  
22 civil case, trials, do you have anybody that's happy. And this  
23 is not fun. This is not what we consider fun. And so, you know,  
24 but it's important. Why is it important. Well, if you were  
25 accused, you'd want people that sit in judgment of you and make

Ferg - Direct/Cayton

107

1 those decisions that they should make, you know, with the facts,  
2 taking the facts and the evidence, keeping an open mind until you  
3 have all the evidence, and applying the law that I give you.  
4 You're not expected under the law, nobody is.

5 Even if you do, you can even disagree with it. It  
6 doesn't matter. As long as you will swear, and you did, to take  
7 whatever I give you as the law and use it. If I give you the  
8 wrong law, then the lawyers will have my paper graded by the  
9 circuit court and they'll tell me I was wrong. Does that make  
10 sense?

11 JUROR NO. 12: Yes.

12 THE COURT: So you know, obviously it would be my  
13 preference and my desire that you continue to serve. I cannot  
14 promise you you'll be comfortable.

15 JUROR NO. 12: No.

16 THE COURT: For any of us. Okay? I wish I could.  
17 It's just not going to be easy. And I know don't think also that  
18 you're the only one that has anxiety. That doesn't make it any  
19 easier for you.

20 JUROR NO. 12: I know.

21 THE COURT: But many of us do. And we always have to  
22 deal with that the best we can. Okay?

23 JUROR NO. 12: Yes.

24 THE COURT: Do you have any comments after I've --

25 JUROR NO. 12: No. Thank you.

Ferg - Direct/Cayton

108

1 THE COURT: I'm not trying to give you -- and I promise  
2 you, I'm not trying to give you a rah-rah speech. I'm not trying  
3 to hold you in here.

4 JUROR NO. 12: No.

5 THE COURT: I just want you to know that's sort of my  
6 thinking. That's how I think through this. And again, we got  
7 really good lawyers in this case. I have full faith and  
8 confidence in them. That tells me they have full faith and  
9 confidence in you as well.

10 And none of them would have you here if -- none of them  
11 would be here if we didn't have to. Does that make sense?

12 JUROR NO. 12: Yes, sir. Yes.

13 THE COURT: And so they're not putting you through the  
14 torture of doing this in your mind for, you know, nefarious  
15 reasons. Does that make sense?

16 JUROR NO. 12: Yes. I understand.

17 THE COURT: Do you have any questions?

18 JUROR NO. 12: No, thank you.

19 THE COURT: Do you feel better?

20 JUROR NO. 12: Yes, I do.

21 THE COURT: Okay. Good. I appreciate that. I'm glad  
22 you do, I hope you do. I want you to feel good about it, and I  
23 want you to serve, obviously. But I worry, you know, if you look  
24 at the bigger picture, there are different parts of a trial, and  
25 I think you're going to see some different things as you go

Ferg - Direct/Cayton

109

1 through the trial, and maybe some things you don't even know or  
2 anticipate.

3 Now I'm not saying it's all going to be, you know,  
4 great. Some of it may be difficult. It's going to be difficult  
5 for everyone, okay?

6 JUROR NO. 12: Okay.

7 THE COURT: Thank you very much.

8 JUROR NO. 12: Yes, sir. Thank you.

9 THE COURT: Keep going, Ms. Baisa. Ms. Baisa, would  
10 you have her just over in the room across the hall for a few more  
11 minutes? And can you come back in?

12 All right. Outside the presence of the jury and  
13 outside this present juror, number 12. Mr. Cayton,  
14 Mr. Greenbaum, any objection to having her just stay on? I don't  
15 see any reason to take her off.

16 MR. CAYTON: No objection, Your Honor.

17 THE COURT: Ms. Battaller or Mr. Gorman?

18 MS. BATALLER-SCHNEIDER: Your Honor, our only concern  
19 is that as Your Honor said, it's just going to get worse. I  
20 don't know if this is going to be a continuing issue.

21 THE COURT: I try to say intense instead of worse.

22 MS. BATALLER-SCHNEIDER: Right.

23 THE COURT: But it is going to get worse, yeah.

24 MS. BATALLER-SCHNEIDER: Yeah.

25 THE COURT: Okay. So -- but I'm not hearing any reason

Ferg - Direct/Cayton

110

1 to take her off. The concern I have is every one of those people  
2 are probably feeling the same way. And I do worry. I want to  
3 make sure that we, you know, I think without more, I'm not -- I  
4 don't feel comfortable releasing her, whether being with  
5 objection or without. I just, I don't think that that's going to  
6 be an issue.

7 If she brings it up again, Ms. Baisa will do the same,  
8 her or any other juror, and will let me know. She wanted -- she  
9 told Ms. Baisa she wanted to speak with me privately. And I of  
10 course -- and Ms. Baisa said I don't think you can do that. So,  
11 and I of course said no, that we'd talk all together.

12 And so I think, you know, my only fear was I didn't  
13 want to embarrass her or anything like that. And I don't think  
14 she was. Obviously seems like she's better now. That doesn't  
15 mean she won't -- we won't have a regression at some point  
16 either.

17 MS. BATALLER-SCHNEIDER: Your Honor, the one thing  
18 that, if I could just mention one thing. I guess there was no  
19 real question of whether or not she could continue to be fair. I  
20 don't know if she made any statements like that.

21 THE COURT: I didn't -- Ms. Baisa --

22 MS. BATALLER-SCHNEIDER: That would be my only concern.

23 THE COURT: -- did she say anything to you about  
24 fairness or whether she could be fair or not? No? The answer is  
25 no. So she never said anything like that to us. She just said

Ferg - Direct/Cayton

111

1 my anxiety is causing this to be a problem. It may end up being  
2 a problem. I can't guarantee y'all that. But I'd like to hold  
3 her in there if we can.

4 All right. Mr. Greenbaum, Mr. Cayton, anything you  
5 want to say? Oh, somebody's phone needs to be turned off.

6 MR. CAYTON: No, Your Honor. Not from the Government,  
7 Your Honor.

8 THE COURT: Ms. Battaller?

9 MS. BATALLER-SCHNEIDER: No, Your Honor. Thank you.

10 THE COURT: All right. Let's rise for this jury then.  
11 And we do have a jury, right? Oh, hang on.

12 UNIDENTIFIED SPEAKER: Yeah. We need to get her back  
13 over there?

14 THE COURT: Yeah, get her back in there before --

15 UNIDENTIFIED SPEAKER: And then we'll bring her.

16 THE COURT: -- we bring her in.

17 MR. GREENBAUM: Your Honor, do you want Special Agent  
18 Ferg to retake the stand?

19 THE COURT: Oh, yeah. Come back up, sir. My bad. And  
20 you're still going on direct, right?

21 MR. CAYTON: Yes, Your Honor.

22 (Jury in at 1:44 p.m.)

23 THE COURT: All right. Let's be seated, please. Thank  
24 you. Mr. Cayton, you may proceed with your direct examination of  
25 Mr. Ferg.

Ferg - Direct/Cayton

112

1 MR. CAYTON: Thank you, Your Honor.

2 BY MR. CAYTON:

3 Q Special Agent Ferg, I'm going to take you back a little bit  
4 to the video you described that you had reviewed from the  
5 downloads.

6 A Yes, sir.

7 Q Do you remember that video?

8 A Yes, I do.

9 Q Did it appear that the young child on the video was under or  
10 over the age of 12?

11 A Based on my training and experience, I would say under the  
12 age of 12.

13 Q And what do you base that on?

14 A General body development, lack of pubic hair.

15 MR. CAYTON: And, Your Honor, I'd like to republish  
16 Exhibit 5 which is the Miranda waiver.

17 THE COURT: Yes, sir.

18 THE CLERK: Mr. Cayton, can you pick up that  
19 microphone?

20 MR. CAYTON: I'll try to be louder, too.

21 BY MR. CAYTON?

22 Q And you said this was the -- this was the Miranda warnings  
23 that you gave to the defendant, correct?

24 A Yes, sir. That's correct.

25 Q I'd like to just go through that a little bit more. Is this



Ferg - Direct/Cayton

113

1 a pre-printed form or is this something that you guys type up  
2 when you're interviewing someone?

3 A This is a pre-printed, agency issued form.

4 Q Now do you just hand this to someone when you're reading  
5 them their rights, or do you read it to them?

6 A Typically, sir, we will give them a copy. We'll confirm  
7 which language they're most comfortable in. And then depending  
8 on if the person would like to read it to themselves or we'll  
9 read it out loud to them.

10 Q And in this case, did you read it out loud?

11 A Yes, sir. We gave a copy to Mr. Perkins and then also read  
12 it out loud.

13 Q And are these the standard Miranda warnings that say we've  
14 seen on TV?

15 A Pretty close, sir.

16 Q And so he's told that he has a right to remain silent?

17 A Yes, sir.

18 Q Anything he says can be used against him?

19 A Correct.

20 Q He had the right to consult an attorney at any time?

21 A Yes, sir.

22 Q He has a right to have an attorney present during  
23 questioning?

24 A Yes, sir.

25 Q And that an attorney can be appointed for him?

Ferg - Direct/Cayton

114

1 A That's correct.

2 Q And you informed him of all these rights orally and with the  
3 paper?

4 A Yes, we did.

5 Q And below that did he sign anything?

6 A Yes, he did.

7 Q And you said he agreed to speak with you. Is that also part  
8 of this?

9 A Yes, that's correct.

10 Q and it says at this time, I'm willing to answer questions  
11 without a lawyer present?

12 A That is what's on the form. Yes, sir.

13 Q Is that his signature that he's hand-signed that, or did you  
14 sign that for him?

15 A He -- that's his signature, sir.

16 Q Did he have any questions for you during the Miranda  
17 warnings?

18 A Not that I recall.

19 Q And the signature right below Mr. Perkins, who's signature  
20 is that?

21 A That would be my signature.

22 Q And then the signature below that, who is that?

23 A That is special Agent Butler with the USDA OIG.

24 Q Now during this interview, is it just you present, or is  
25 Agent Butler present, as well?

Ferg - Direct/Cayton

115

1 A Agent Butler was also present.

2 Q Was there anyone else present in the room?

3 A Just Mr. Perkins.

4 MR. CAYTON: Your Honor, may I approach the witness?

5 THE COURT: Yes, sir, you may.

6 BY MR. CAYTON:

7 Q I have what's been marked as Prosecution Exhibit 6 for  
8 identification. Do you recognize that?

9 A Yes, I do.

10 Q What did I just hand you?

11 A That is a CD with an audio recording from our interview with  
12 Mr. Perkins.

13 Q How do you know that's what it is?

14 A It's the one that I reviewed earlier and I put my initials  
15 on.

16 Q And you said it's the audio interview from Mr. Perkins when  
17 you interviewed him?

18 A That's correct.

19 Q And you said you had a chance to review it?

20 A Yes, I did.

21 Q Is it an accurate reflection of the interview you had with  
22 Mr. Perkins?

23 A Yes.

24 MR. CAYTON: Your Honor, at this time, the Government  
25 would offer Prosecution Exhibit 6 for identification as

Ferg - Direct/Cayton

116

1 Prosecution Exhibit 6.

2 THE COURT: Government's Exhibit 6. Ms. Bataller?

3 MS. BATALLER-SCHNEIDER: No objection, Your Honor.

4 THE COURT: Government's Exhibit 6 is admitted without  
5 objection.

6 (Government's Exhibit 6 admitted into evidence)

7 MR. CAYTON: May I approach the witness, Your Honor?

8 THE COURT: Yes, you may approach.

9 MR. CAYTON: And, Your Honor, at this time I would ask  
10 to publish Prosecution Exhibit 6 to the jury by playing the  
11 audio.

12 THE COURT: That's the audio. Is it all audio, or do  
13 we have any transcript?

14 MR. CAYTON: It's only audio, Your Honor.

15 THE COURT: Only audio.

16 MR. CAYTON: Yeah.

17 THE COURT: How long about, just a ballpark.

18 MR. CAYTON: Approximately 50 minutes, Your Honor.

19 THE COURT: Fifty?

20 MR. CAYTON: Yes, Your Honor, 5--.

21 THE COURT: Okay. Okay. I may stop you at some point  
22 to let everybody take a break. That's a long time.

23 MR. CAYTON: That's fine, Your Honor.

24 THE COURT: To listen. Okay. All right. Go right  
25 ahead.

Ferg - Direct/Cayton

117

1 MR. CAYTON: I trust Ms. Rosemary to be able to pause  
2 and replay.

3 THE COURT: I trust her too. I don't trust you though.  
4 So --

5 MR. CAYTON: I wouldn't either, Your Honor.

6 THE COURT: Ms. Martinez, if it doesn't start loud  
7 enough, you can always back it up and restart it, whatever you'd  
8 like.

9 MS. MARTINEZ: Thank you, Your Honor.

10 (Audio plays from 1:51 p.m. to 2:48 p.m.)

11 MR. CAYTON: Am I okay to keep going, Your Honor?

12 THE COURT: Sure.

13 BY MR. CAYTON:

14 Q Special Agent Ferg, during the audio, we heard multiple  
15 times being referenced that he was not under arrest. The  
16 defendant was not under arrest. Why would you -- why did you  
17 tell that to the defendant?

18 A I told him that because specifically for that reason, that  
19 he was not under arrest. There was no decision made about  
20 whether he was going to be charged or not at that time.

21 Q And at one point during the interview you asked him about  
22 the term PTHC.

23 A Yes, sir, that's correct.

24 Q And you asked him if he knew what it stood for.

25 A That's correct, yes.

Ferg - Cross/Bataller-Schneider

118

Q And he told you that he did?

A He did say that he knew what it meant.

Q What does PTHC stand for?

A Based on my training and experience, it will stand for preteen hardcore.

Q And is this a common search term for child pornography?

A Yes, it is.

MR. CAYTON: May I have just a moment, Your Honor?

THE COURT: Yes, sir, you may.

(Pause)

MR. CAYTON: Pass the witness, Your Honor.

THE COURT: Thank you. Ms. Bataller, your witness.

MS. BATALLER-SCHNEIDER: Thank you.

CROSS-EXAMINATION

BY MS. BATALLER-SCHNEIDER:

Q Good afternoon.

A Good afternoon.

Q Do you have any personal experience with Asperger's or schizoaffective disorder?

A No, ma'am, I don't.

Q Have you been trained on interviewing people with Asperger's or schizoaffective disorder?

A No, I have not.

Q And before you met with Thomas, you were aware that he was diagnosed with schizophrenia, correct?

Ferg - Cross/Bataller-Schneider

119

1 A Yes, ma'am. His parents had mentioned that.

2 Q And you were aware that he had Asperger's as well, correct?

3 A Yes. I believe that that had come up, as well.

4 Q And you were aware that he was considered disabled. Is that  
5 right?

6 A Yes, ma'am.

7 Q And that as an adult man who was still living with his  
8 parents?

9 A Yes, ma'am.

10 Q You're also aware that -- you were also aware he doesn't  
11 drive and doesn't have a license?

12 A Yes, ma'am. That's correct.

13 Q Because of his disability?

14 A His father had said that he was kind of a dangerous driver.

15 Q And that was in the conversation about his disability,  
16 correct?

17 A Yes, ma'am.

18 Q And you're aware that he stays home most of the time as  
19 well?

20 A Yes, ma'am.

21 Q When you first confronted Thomas about what you'd found on  
22 the computers, he admitted he was the person doing the  
23 downloading, correct?

24 A Yes, ma'am. I believe he did.

25 Q He never tries to blame anyone else?

Ferg - Cross/Bataller-Schneider

120

1 A No, he did not.

2 Q I think you testified in direct about him saying he was tech  
3 savvy. You just listened to that disc, correct, with everyone  
4 else here?

5 A Yes, ma'am.

6 Q And in fact, Thomas never personally says I'm a tech savvy  
7 person. He doesn't use that language, correct?

8 A In reviewing, yeah, I believe it was his parents that had  
9 called him tech savvy.

10 Q But he doesn't say that, correct?

11 A Yes, ma'am. I believe that's correct.

12 Q and you're the one who uses the term tech savvy about five  
13 times throughout that interview?

14 A I didn't keep count.

15 Q Does five times sound about right?

16 A I could review my notes. That might be right.

17 Q He -- at one point Thomas talks about a program called, you  
18 pronounced it Tixati. Is that right?

19 A Yes, ma'am.

20 Q I'm not very tech savvy. So bear with me. But Thomas was  
21 calling it tiaksi (phonetic). Is that right?

22 A He -- I believe he said that he didn't know how it was  
23 pronounced. But that is how he pronounced it, yes.

24 Q Now Thomas described some of his use of computers as sort of  
25 like an addiction. Is that right?



Ferg - Cross/Bataller-Schneider

121

1 A Yes. He did use that term.

2 Q That he was addicted to the actual act of downloading.

3 A Yes, ma'am. He did say that.

4 Q And that he liked downloading stuff and watching it upload  
5 and download for the sake of watching it.

6 A He did say that.

7 Q And speaking of this sort of obsessive behavior, he also  
8 told you that he had 12 YouTube accounts?

9 A Yes, ma'am. He did --

10 Q And that they were all categorized?

11 A I don't recall him specifically saying they were  
12 categorized.

13 Q And you also recovered over 60 devices from that home. Is  
14 that right?

15 A Personally, I did not. But my agents that were doing the  
16 search warrant, yes. Approximately 60 devices.

17 Q That's not the typical amount of devices to get from one  
18 individual, correct, when you're doing these search warrant  
19 executions?

20 A You know, ma'am, in my experience, it varies widely. We've  
21 had people with a few devices to a very large number.

22 Q Would you say 60 devices is a large number?

23 A I would say 60 devices is probably a large number for one of  
24 these cases.

25 Q Now I want to talk about how this case originated. You said

Ferg - Cross/Bataller-Schneider

122

1 that you received this information or these files from Agent  
2 Bonneau. Is that right?

3 A Yes, ma'am.

4 Q And how would you receive these?

5 A I receive them from a -- from our computer -- sorry,  
6 computer forensics agents or CFAs in El Paso who would actually,  
7 they were the ones who received them from Agent Bonneau.

8 Q And do you know how Agent Bonneau sent those over to El  
9 Paso?

10 A I'm not too familiar with the technology. There's a way  
11 that it can be safely and securely shared between the agents.

12 Q But you can't testify as to exactly how that's done,  
13 correct?

14 A I know it's called the ohm cloud. Beyond that, I haven't  
15 used it much personally.

16 Q Now how did the CFAs in El Paso get it over to you?

17 A They just burned a disc of it. And then I don't remember  
18 now if it was hand delivered or FedExed.

19 Q So it may have been sent in the mail, but you don't know.

20 A I don't know.

21 Q And were you there when they burned those discs?

22 A No, I was not.

23 Q Now you're the one who first mentioned PTHC in the  
24 interview, correct?

25 A Yes, ma'am, that's correct.

Ferg - Cross/Battaller-Schneider

123

1 Q Thomas did not bring that up.

2 A that's correct.

3 Q And he just said yes when you asked him if he knows what it  
4 stands for, correct? He didn't specifically say what it stands  
5 for?

6 A That's correct.

7 Q I want to talk a little bit about VPNs. You use a VPN while  
8 working for the federal government, correct?

9 A Yes, ma'am.

10 Q In fact, a lot of agencies and businesses use VPNs, correct?

11 A I believe so, yes.

12 Q And private home networks also use VPNs, correct?

13 A I know that it's an option that can be used.

14 Q And as far as you understand in your investigation, the  
15 allegation of distribution was based on an agent being able to  
16 get a video or image from Thomas' account, correct?

17 A From the IP address that he was using, yes.

18 Q I apologize. That's a better explanation than what I gave.  
19 And but that IP address didn't specifically send that over to the  
20 Government, correct?

21 A It had made the content available by using the software.

22 Q Available for the Government to get, correct?

23 A Available for any of the BitTorrent users to correct.

24 Q Right. But they would have to collect it, correct?

25 A I'm not sure. I'm not familiar with that enough to know if

Ferg - Cross/Bataller-Schneider

124

1 that was somebody would have to specifically choose to download,  
2 or how it would -- how they would get it.

3 Q As far as you understand from BitTorrent, that's -- there's  
4 simply a sharing feature that comes as a default with the  
5 program. Is that right?

6 A That is my understanding, yes.

7 Q So when you get this program, the default is going to be for  
8 it to share?

9 A I've never used the software myself. But that is my  
10 understanding.

11 Q And your understanding is that you actually -- you actively  
12 have to do something to turn off that feature of sharing,  
13 correct?

14 A That is what I've been told. Yes, ma'am.

15 Q You were the one who brought up the sharing feature of  
16 BitTorrent first, correct?

17 A Yes, ma'am. I believe so.

18 Q And you explained it a little bit to Thomas. Is that right?

19 A I know we discussed it.

20 Q And when you were discussing it, he said I personally did  
21 not share anything.

22 A He says he did not share his own content.

23 Q But that's the statement that he -- he made the statement  
24 not talking about his own content when he said he does not share  
25 anything. In the first -- let me just go back. I'm sorry. Let

Ferg - Redirect/Cayton

125

1 me ask this in a better way. When you first talked about  
2 sharing, he said that he does not share, correct?

3 A Yes, ma'am. That's the first statement he made.

4 Q And he doesn't ever mention that he should have disabled  
5 that feature until much further along in the conversation,  
6 correct?

7 A I do know that he mentions that. I don't remember exactly  
8 at what point in the conversation it was.

9 MS. BATALLER-SCHNEIDER: Could I have just one moment,  
10 Your Honor?

11 THE COURT: Yes, ma'am. Of course.

12 MS. BATALLER-SCHNEIDER: Nothing further. Thank you.

13 THE COURT: Anything on redirect? On those points?

14 MR. CAYTON: May I have just a moment, Your Honor?

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. CAYTON:

18 Q Agent Ferg, when you were talking to the defendant, did he  
19 mention that Tixati or however the word was pronounced, was that  
20 the first time he used a BitTorrent software?

21 A No, sir.

22 Q How long did he say he'd been using peer-to-peer software?

23 A He said that he had first begun using peer-to-peer software  
24 in 2008 and 2009.

25 Q Did he mention other devices that had peer-to-peer software

1 on it?

2 A He did mention that there was an older computer desktop that  
3 he had originally used for BitTorrent and peer-to-peer activity.

4 Q He mentioned a program called BitTorrenting?

5 A I'm not sure if that was just part of the interview that was  
6 hard to understand. I believe that he had called it actually --  
7 that he thought it was called BitTorrent like the original  
8 version.

9 MR. CAYTON: May I have just a moment, Your Honor?

10 THE COURT: Sure.

11 MR. CAYTON: Pass the witness, Your Honor.

12 THE COURT: Anything further?

13 MS. BATALLER-SCHNEIDER: No, Your Honor.

14 THE COURT: You may step down.

15 (Witness excused)

16 THE COURT: Ladies and gentlemen of the jury, you just  
17 heard testimony regarding other acts of the defendant. This  
18 evidence is admitted for limited purposes. Though other acts may  
19 be similar to those charged in the indictment, they were  
20 committed on another occasion. You must not consider defendant's  
21 other acts in deciding if the defendant committed the acts  
22 charged in this indictment.

23 You may, however, consider this evidence for other  
24 limited purposes. If you find beyond a reasonable doubt from  
25 other evidence in the case that the defendant did commit the acts

1 charged in the indictment, then you may consider this evidence of  
2 similar acts committed on another occasion to determine whether  
3 the defendant had the state of mind, intent, or knowledge  
4 necessary to commit the crime charged in the indictment, or  
5 whether the defendant committed the acts for which he is on trial  
6 by accident or mistake. These are the limited purposes for which  
7 these similar acts may be considered.

8 Government's next witness?

9 MR. CAYTON: The Government wishes to call David  
10 Barkley to the stand, Your Honor.

11 THE COURT: David Barkley. Is everybody okay? Anybody  
12 need a break? We'll get one about 3:30 or so, how about that?  
13 That okay? You ask me, I say I need a break. But I'm asking  
14 y'all.

15 (Pause)

16 THE COURT: Sir, if you'd come on up to the stand.

17 THE CLERK: Sir, could you stop right there? Could you  
18 raise your right hand?

19 DAVID BARKLEY, GOVERNMENT'S WITNESS, SWORN

20 THE CLERK: You can have a seat.

21 THE COURT: You may have a seat, sir. Just adjust  
22 yourself to the microphone.

23 THE WITNESS: Yes, sir.

24 THE COURT: Mr. Greenbaum, you may proceed whenever  
25 you're ready.

Barkley - Direct/Greenbaum

128

1 MR. GREENBAUM: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. GREENBAUM:

4 Q Sir, can you introduce yourself to the jury?

5 A David Barkley.

6 Q Yes, sir. And can you spell your last name please, sir, for  
7 the record?

8 A B-A-R-K-L-E-Y.

9 Q Yes, sir. And, sir, how are you employed?

10 A Currently employed as a seized property specialist for  
11 Homeland Security Investigations.

12 Q Okay. So what we would call as maybe the evidence  
13 custodian. Is that correct?

14 A Yes, sir.

15 Q Sir. And can you tell us your law enforcement -- or how  
16 long have you been with Homeland Security?

17 A Thirteen years.

18 Q Sir. And prior to being with Homeland Security, can you  
19 tell us some of the duties you've had working with Homeland  
20 Security?

21 A Working with Homeland Security, we established an evidence  
22 collection program in which we are actually involved in the  
23 actual search itself to maintain a complete chain of custody for  
24 all evidence that are seized or taken as evidence.

25 Q Yes, sir. And that's your current assignment. Is that



Barkley - Direct/Greenbaum

129

1 correct?

2 A Yes, sir.

3 Q And are you out -- where are you out of? Where --

4 A El Paso, Texas.

5 Q El Paso, Texas. Correct. Okay. Prior to working with  
6 Homeland Security, can you tell the jury a little bit about any  
7 other law enforcement experience that you may have?

8 A Sir, I have 20 years as a state -- officer for the State of  
9 Texas working at the city department level as a peace officer,  
10 and then subsequent detective, retired. Prior to that, at the  
11 age of 17 I was enlisted in the United States Army as a military  
12 police officer.

13 Q Sir. Thank you for your service. Let me draw your  
14 attention back to January the 9th of 2020. Did you become  
15 involved in a search warrant in a home located in Fort Stockton,  
16 Texas?

17 A Yes, I did.

18 Q And is Fort Stockton, Texas located in the Western District  
19 of Texas?

20 A Yes, it is.

21 Q Okay. Can you tell the jury what was your role back on  
22 January the 9th of 2020 in regards to the search of a residence  
23 in Fort Stockton, Texas?

24 A We normally receive an operational plan prior to the  
25 operation action taking place, at which team -- at which time

Barkley - Direct/Greenbaum

130

1 myself and my team, we organize who is going to attend and to  
2 what extent. With this particular search warrant, we created the  
3 seizure number which is unique to this location, and all  
4 documentation to be used at that -- at that location.

5 Q Okay. And in regards to anticipation, you're basically the  
6 evidence custodian, the person that's going to be picking up any  
7 possible evidence in this case, correct?

8 A Correct.

9 Q And I'm looking at it looks like a custody receipt form.  
10 How do we know specifically -- let me start off with this. And  
11 this form that I'm looking at, it's called an FPF number. What  
12 is that to your agency?

13 A That is the Fines, Penalties and Forfeiture number. It's  
14 unique to this specific seizure event, and the items that are  
15 seized thereupon. They are stored under that specific number.  
16 And that number can never be repeated because of the breakdown of  
17 the number. It always begins with the fiscal year which would be  
18 2020.

19 And then it begins -- then the next sequence of numbers are  
20 going to be that specific port area. This case, it would be  
21 2424. And the last portion of the numbers will indicate the  
22 numerical sequence of the seizure event. This would be number 28  
23 out of 30, or 40, or 50. And the last two numbers indicate how  
24 many violators we have.

25 Q So much like a fingerprint, this number would only

Barkley - Direct/Greenbaum

131

1 correspond to one single case, correct?

2 A Correct.

3 Q And in regards to this number, does this correspond to the  
4 residence, the search based on I believe it's South Seals Street  
5 in Fort Stockton, Texas?

6 A Yes, sir, it does.

7 Q Okay. In addition to that, as part of your housekeeping, is  
8 there something called an instant number?

9 A Yes, sir. The instant number contained upon that form is  
10 also a unique number in that it begins again with the fiscal  
11 year. It also indicates by alpha sequence what type of event it  
12 was, whether it would be SZ would be for a seizure only, and SA  
13 would be a seizure arrest event. And then the next sequence of  
14 numbers will be the numerical sequence in which this event  
15 occurred. If it was arrest number 200, that sequence would be  
16 200. If it was 205, it would be 205.

17 Q Sir. And furthermore, is there another number also to -- so  
18 you know in regards to at the top of it's usually in the right-  
19 hand corner of the evidence receipt, of the custody of the  
20 evidence receipt that also specializes to know where this  
21 evidence came from?

22 A Yes, sir. That's each one of our chain of custody documents  
23 are serialized. That's a unique number for that specific form.  
24 And it will never be used in the same format again for any other  
25 document seizure, or past.

Barkley - Direct/Greenbaum

132

1 Q Yes, sir. And do you have the actual, that actual number  
2 for this seizure that occurred back on January the 9th of 2020 on  
3 South Seals Street in Fort Stockton, Texas?

4 A If I could take a look at the chain of custody document?

5 Q Yes, sir. You may, sir.

6 A All right.

7 MR. GREENBAUM: May I approach, Your Honor?

8 THE COURT: Yes, sir, you may.

9 BY MR. GREENBAUM:

10 Q Whenever you're ready, go ahead and tell us that number.

11 A Yes, sir. This actual Fines, Penalties, and Forfeiture  
12 number, it is 2020-2424-00002803.

13 Q And this corresponds to the Perkins' residence on South  
14 Seals Street and Fort Stockton, Texas?

15 A Yes, sir, it does.

16 Q And in regards to that, since I have you here, do you also  
17 have some items that were seized, in other words are there line  
18 items for each item that was seized in this case?

19 A Yes, sir. Each -- each line item is listed on the chain of  
20 custody document at the residence at the time of seizure.

21 Q Okay. And in reference to this case, do you know  
22 approximately how many items were seized, if you know?

23 A Sixty-one.

24 Q Sixty-one. Yes, sir. Now, sir, before we talk about  
25 seizure of the items, did you actually document the inside of the

Barkley - Direct/Greenbaum

133

1 interior of the home?

2 A Yes, sir. Our normal procedure, once we had the location,  
3 in this case a residence, secured, I will go in and I will  
4 photograph the residence as we enter it, as we found the  
5 residence, the shape, condition, and what is in plain -- plain  
6 view. And we will do what's called in photographs that indicate  
7 how it was initially when we walked in the door.

8 Q Yes, sir. If I could have you turn to the Government  
9 exhibit book and take a look at Government's Exhibit Number 3.  
10 It's going to be tabbed number 3. And once you're done looking  
11 at that, let me know and then I have some questions for you. I  
12 think there's going to be a couple pages in regards to  
13 Government's Exhibit Number 3. If you have to pull it out,  
14 that's okay.

15 A Yes, sir.

16 Q Okay. Are you familiar with what's contained in  
17 Government's Exhibit Number 3?

18 A Yes, sir. What is contained in this photograph is the  
19 taking of photographs going in the residence. And this is how we  
20 located these items and how they were placed when we first  
21 entered the residence.

22 Q Okay. And were these photographs actually -- are they a  
23 fair and -- let me ask it this way. Are they a fair and accurate  
24 depiction of what they show in the photographs?

25 A Yes, sir, they are.

Barkley - Direct/Greenbaum

134

1 Q And to the best of your knowledge, has any of these  
2 photographs in Government's Exhibit Number 3 been altered or  
3 tampered with in any way?

4 A No, sir, they can not.

5 Q And are you the actual person that took these photographs?

6 A Yes, sir, I am.

7 Q and did you take these photographs on or about January the  
8 9th of 2020?

9 A Yes, sir, I did.

10 MR. GREENBAUM: At this time, Your Honor, Government  
11 moves to admit Government's Exhibit Number 3 which is a series of  
12 photographs.

13 THE COURT: Ms. -- or I'm sorry, Mr. Gorman?

14 MR. GORMAN: No objection, Your Honor.

15 THE COURT: Government's Exhibit 3 is admitted without  
16 objection.

17 (Government's Exhibit 3 admitted into evidence)

18 MR. GREENBAUM: May I publish to the jury, Your Honor?

19 THE COURT: Yes, sir, you may.

20 MR. GREENBAUM: Thank you, Your Honor.

21 BY MR. GREENBAUM:

22 Q All right. Let's start with this first photograph. What is  
23 this -- Agent, can you tell us what this first photograph is, or  
24 what the significance of this photograph is?

25 A This photograph indicates the location of a television set

Barkley - Direct/Greenbaum

135

1 and numerous computer systems that were attached thereto and were  
2 being utilized.

3 Q Okay. And specifically when we're looking at this, I see  
4 some -- in addition -- below, what is that that we're seeing?  
5 There's two items there at the bottom of the photograph.

6 A What you see there are two laptops. They were operational  
7 and they were placed on top of the boxes in which they came in, I  
8 assume.

9 Q Okay. And then next to these laptops, I see some other  
10 electronic devices. Based on your training and experience, or if  
11 you know, what are these electronic devices that are around the  
12 laptops?

13 A Those are the hard drives. External hard drives.

14 Q External hard drives. Okay. And it looks like, if I'm  
15 looking at it right, it's approximately four, is that right, I  
16 see in the picture?

17 A Yes, sir.

18 Q And then up here, I can't tell so I'll ask you. Is this  
19 another hard drive, or is that maybe a phone?

20 A That's another external hard drive.

21 Q So there's a hard drive that's connected here, and the up --  
22 I guess the lower right-hand corner, and is that another hard  
23 drive there connected to the upper left-hand corner. Is that  
24 correct?

25 A Correct.

Barkley - Direct/Greenbaum

136

1 MR. GREENBAUM: Okay. If you could go ahead and move  
2 on to the next one, Ms. Rosemary. Thank you.

3 BY MR. GREENBAUM:

4 Q Can you tell us what the significance of the next one on  
5 Government's Exhibit Number 3 is, what this photo means.

6 A And if you have to look up, it's also published on the  
7 screen as well, sir.

8 Q This photograph again, and as I'm photographing in, I'm  
9 panoramic photographing the room so that you can piece together  
10 the entire residence as it was when we entered. And this would  
11 be a location that was obviously being utilized. But it's one of  
12 the panoramic photographs of the area.

13 Q Yes, sir. And do you know whose room or residence this was  
14 in this photograph?

15 A This was the one of the violator's individual's faces.

16 Q Yes, sir. And when you say violators, are you talking about  
17 Mr. Thomas Scott Perkins?

18 A Yes, sir. He was the individual of the search.

19 Q Okay. And so this is basically where he was living or his  
20 residence.

21 MR. GORMAN: Objection. Move to strike the term  
22 violator.

23 THE COURT: Sustained. That word is stricken. The  
24 jury will disregard.

25 BY MR. GREENBAUM:



Barkley - Direct/Greenbaum

137

1 Q And so was -- sir, was this Mr. Perkins' residence here that  
2 we're seeing?

3 A Yes, sir.

4 Q Okay. So this is basically -- do you know, and if you know,  
5 is this the area that he was apprehended at or the police  
6 encountered him at, law enforcement?

7 A Yes, sir. And along with our other duties, we are perimeter  
8 security. At that specific time I was at the front of the  
9 residence. When they entered, that's where they first  
10 encountered an individual.

11 Q Yes, sir. So he was basically in this area. Is that  
12 correct?

13 A Yes, sir.

14 Q Okay. If we could go ahead and move on to the next. What  
15 is, again, Government's Exhibit Number 3, this image?

16 A This is another photograph of the laptops encountered in the  
17 first room.

18 Q Okay. And if we could move on to the next exhibit. What is  
19 the significance of this Government's Exhibit Number 3?

20 A This was another photograph of one of the laptops  
21 encountered in the first room. As we take our photographs, we  
22 photograph the evidence in place that's in plain view.

23 Q So this is how it would have been as it was set up by the  
24 person that was living there. Is that correct?

25 A Yes, sir, it is.

Barkley - Direct/Greenbaum

138

1 Q Okay. So this hadn't been moved or anything at the time  
2 that this picture was taken?

3 A No, sir. No search begins until after all the intake  
4 photographs are done.

5 Q Yes, sir. And what type of laptop, just so we can have a  
6 clean record, does this deal with?

7 A This is a Dell laptop.

8 Q Yes, sir. Okay. And we can move on to I believe the final  
9 picture of the series. Can you tell us what this picture  
10 depicts?

11 A This picture depicts another area of the residence as you're  
12 coming into the residence. And it photographs all the documents,  
13 mail, et cetera in the photograph, or the panoramic view of that  
14 room.

15 Q Yes, sir. So this is just maybe, like, a little bit  
16 different angle from the other photograph that we saw earlier in  
17 this series. Is that correct?

18 A Yes, sir, it is.

19 Q Okay. All right. Thank you for that, sir. Now as part of  
20 your duties there, did you actually seize some items that we  
21 talked about?

22 A Yes, sir. Our standard operating procedure, when an agent  
23 is conducting a search of an assigned area, if items of  
24 evidentiary value based on the search warrant are located, they  
25 will call out and I will go photograph that item in its location

Barkley - Direct/Greenbaum

139

1 originally where it was and how it was, at which time we will go  
2 ahead and we will bag it. I will take custody of it and place it  
3 on a chain of custody at the residence.

4 Q Okay. And so just so we're clear for the record, in this  
5 case you seized approximately 61 electronics or some sort of  
6 device. Is that right?

7 A Yes, sir, we did.

8 MR. GREENBAUM: Okay. Your Honor, if I may ask this  
9 witness to step down, and we have some physical evidence in a  
10 box.

11 THE COURT: Certainly. Make sur we're staying near a  
12 microphone though.

13 MR. GREENBAUM: Yes, Your Honor. I will --

14 THE COURT: Is there one up here, Cristina --

15 MR. GREENBAUM: -- figure that out.

16 THE COURT: -- that he can use? You may step down.

17 THE WITNESS: Yes, sir.

18 BY MR. GREENBAUM:

19 Q Sir, if I could ask you to step down. Thank you. I do not  
20 want to break anything. All right. I think we're good. All  
21 right. Sir, let's go ahead and I want to go kind of line by  
22 line. First I want to go, there's different counts in what we  
23 call a superceding indictment.

24 I want to go by the first digital -- the first hard drive or  
25 the first computerized thing that's listed in the indictment

Barkley - Direct/Greenbaum

140

1 which is Count 2. Specifically I want to see if there is a  
2 Western Digital hard drive model WD800, with a Serial Number WD-  
3 WCAJ92661471. I believe if you can refer to it, see if you can  
4 find it on here. It looks like to me it is line item 16. See if  
5 that is correct to you.

6 A Yes, sir. That will be the hard drive from within  
7 (indiscernible).

8 Q Okay. And --

9 THE COURT: Mr. Yanez, sir, you know you're speaking to  
10 them. Be sure you're speaking up toward this microphone right  
11 here.

12 THE WITNESS: Oh, I'm sorry, sir.

13 THE COURT: I mean, I think you ought to be looking at  
14 them, but you ought to be talking on this mic.

15 THE WITNESS: Yes, sir.

16 MR. GREENBAUM: Sorry, sir. I know it's a little bit  
17 awkward.

18 BY MR. GREENBAUM:

19 Q In regards to Count number 2, this item, can you find this  
20 item inside this box and see if we have it on line item number  
21 16?

22 A Okay. Line item 16 was one of the desktop tower computers.  
23 The item listed is the hard drive. The computer forensic  
24 analyst, they remove the hard drive to analyze it. And it is  
25 then subsequently placed back into the desktop computer to keep

Barkley - Direct/Greenbaum

141

1 the line of evidence in its entirety. It is not a separate item  
2 by itself. It stays with the line that it came from.

3 Q Yes, sir. And for record purposes, I'm going to go ahead  
4 and mark this as Government's Exhibit Number 9. And I'll ask you  
5 the same questions on all of these. But to the best of your  
6 knowledge, has this computer, other than forensic analysis that  
7 may have been done on it, been altered or tampered with in any  
8 way?

9 A No, sir, it has not.

10 The chain of custody and the evidence is always joint  
11 verified wherever it goes to be stored. In this case it's  
12 (indiscernible) so it would be stored in our (indiscernible)  
13 vault where it is joint verified by personnel who put it on the  
14 shelf and myself.

15 Q Yes, sir.

16 And the next one that I'm going to ask you is going to be in  
17 regards to Count 3. There is a device named Maxtor hard drive  
18 device model Diamondmax Plus 9, Serial Number Y45BC9XE. And I  
19 have in my notes that that corresponds with line item number 18.  
20 Can you confirm in effect that is line number 18?

21 A Yes, sir, it is.

22 Q Yes, sir. And if you could, could you tell us which one is  
23 line number 18?

24 A This here would be line number 18.

25 Q Yes, sir. For the record, I'm going to go ahead and put

Barkley - Direct/Greenbaum

142

1 Government's Exhibit Number 12 on line item 18.

2 A Line number 18 is marked and corresponds with the chain of  
3 custody as a line number.

4 Those numbers are generated by our system. The hard drive  
5 from that line would be removed for forensic analysis, and then  
6 it would be placed back with the original equipment and receive  
7 that.

8 Q Yes, sir. And I neglected to ask you these questions. But  
9 in regards to -- let's go back to line item number 9. Is there a  
10 way that you can make a determination where this item was  
11 manufactured at? Is that something you could make that  
12 determination on?

13 A No, sir.

14 Q That's okay. That's okay because of the way it's covered.  
15 Okay. That's fine. Let's go ahead and move on to what is going  
16 to be Count 4. And there's a device named Seagate hard drive  
17 model number ST1000LM049, with a Serial Number WGS5QBVZ. And in  
18 regards to that, can you see if you can locate that line item? I  
19 have it as line item number 11, but can you confirm in fact if  
20 that is line item number 11?

21 A Yes, sir, it is. It is line number 11.

22 Q Okay. And if you could go ahead and pull that out of the  
23 box if you locate that device. I'll go ahead and mark this for  
24 the record as Government's Exhibit Number 15. And what is this  
25 Government's exhibit that I've marked as Government's Exhibit

Barkley - Direct/Greenbaum

143

1 Number 15? What does that appear to be?

2 A This would be the HP Windows laptop and the hard drive  
3 that's within it.

4 Q Yes, sir. And was that one of the photos that we saw that  
5 you testified to in Government's Exhibit Number 3?

6 A Yes, sir, it is.

7 Q Okay. Now let's go ahead and move on to Government's  
8 Exhibit Number 5. And again, similar questions. The Seagate  
9 hard drive model device number SRDONF2, serial number NA8EYNL.  
10 And I have that as corresponding to line item number 27. Can you  
11 confirm if that is in fact line item number 27 and then see if we  
12 have that in evidence.

13 THE COURT: Mr. Greenbaum, you stated Government's  
14 Exhibit 5. You mean Count 5 of the indictment?

15 MR. GREENBAUM: Yes, Count 5. I apologize, Your Honor.  
16 Thank you for that clarification. Count 5.

17 THE WITNESS: What was your --  
18 BY MR. GREENBAUM:

19 Q Yes, sir. Line item number 27, does that match up to the  
20 Seagate hard drive model number SRDONF2?

21 A Yes, sir, it does.

22 Q Okay. If we can go ahead and find that exhibit, or that  
23 evidence. Okay. If I could have you just lay it on top there.  
24 And for the record, I'm going to mark this as Government's  
25 Exhibit Number 18. Okay. Now moving to Count 6, there's a

Barkley - Direct/Greenbaum

144

1 device named Seagate hard drive device model SRDOPV1, serial  
2 number NA9Q02S9. In regards to I have it as line number 28. Can  
3 you confirm that in fact that is line number 28?

4 A Yes, sir, it is.

5 Q Okay. And if you could, go ahead and see if we have that  
6 item of evidence available today as well. I'm going to go ahead  
7 and mark Government's Exhibit Number 21 on that.

8 Moving on to Count 7, can you see if you have a Western  
9 Digital hard drive device model WDBYFT0040BBK0A with a serial  
10 number of WX51D961NE27? And that, I have it corresponding to a  
11 line number 39. Can you see and confirm in fact that matches  
12 with line number 39?

13 A Yes, sir, it does.

14 Q Okay. And if I could just have you retrieve that item from  
15 out of the evidence box. For the record, I'm going to go ahead  
16 and mark this Government's Exhibit Number 24. Moving on to Count  
17 number 8, can you verify if we have a Samsung hard drive serial  
18 number S267J1LZ503188 contained, I believe it's number line item  
19 34. Can you see if we have that piece of evidence, as well?

20 A Yes, sir, we do.

21 Q Okay. If you could go ahead and bring that piece of  
22 evidence out as well.

23 For the record, I'm going to go ahead and mark this as  
24 Government's Exhibit Number 27. And finally, as for Count number  
25 9, do we have, it references a SimpleTech hard drive model number



Barkley - Direct/Greenbaum

145

1 96300-41001-68, Serial Number 093350920000206005. It corresponds  
2 from my records to line number 32.

3 Do you see that there, and can you confirm if that is in  
4 fact line number 32?

5 A Yes, sir, it is.

6 Q Okay. And if you could go ahead and get that out of the  
7 evidence box, as well.

8 And for the record, I'm going to go ahead and mark that as  
9 Government's Exhibit Number 30. You can go ahead and have a  
10 seat, sir. Thank you.

11 A Yes, sir.

12 Q So much. And in regards to all these exhibits that we just  
13 talked about, and for the record it's going to be number 9,  
14 number 12, number 15, number 18, number 21, number 24, number 27,  
15 and number 30, these were all items that were seized from the  
16 Perkins' residence back on January the 9th, 2020?

17 A Yes, sir, they were.

18 Q And to the best of your knowledge, other than the  
19 Government's exhibit sticker that was just placed on it, none of  
20 them have been altered or tampered with in any way?

21 A Correct. They are as bagged.

22 MR. GREENBAUM: Okay. At this time, Your Honor,  
23 Government would move to admit Government's Exhibit Number 9,  
24 Number 12, Number 15, Number 18, Number 21, Number 24, Number 27,  
25 and Number 30.

Barkley - Direct/Greenbaum

146

1 THE COURT: Mr. Greenbaum, Government's Exhibit 9  
2 corresponds to -- which one corresponds to different counts?

3 MR. GREENBAUM: Yes, Your Honor. I apologize. Number  
4 9 would --

5 THE COURT: No reason to apologize. Just I just lost  
6 track. 24 is Count 7. 27 is Count 8.

7 MR. GREENBAUM: Yes, sir.

8 THE COURT: What's 9?

9 MR. GREENBAUM: Number 9 is going to correspond to  
10 Count 2, Your Honor. Number 12 would --

11 THE COURT: 12 is what?

12 MR. GREENBAUM: 12 would be Count 3, Your Honor.

13 THE COURT: 15?

14 MR. GREENBAUM: 15 would be Count 4, Your Honor. 18 is  
15 going to be Count 5. Count 6 is going to be 21. Count 7 is  
16 going to be 24. And Count 8 is going to be Government's Exhibit  
17 Number 29. And then --

18 THE COURT: Wait, wait, wait.

19 MR. GREENBAUM: I'm sorry. I'm sorry, Judge. I  
20 apologize. Count 8 is going to be number 27. And Count 9 is  
21 going to be Government's Exhibit Number 30, Your Honor.

22 THE COURT: Defense? Objections?

23 MR. GORMAN: No objections, Your Honor.

24 THE COURT: Government's Exhibits 9, 12, 15, 18, 21,  
25 24, 27, 30 are admitted without objection.

1 (Government's Exhibits 9, 12, 15, 18, 21, 24, 27, and 30  
2 admitted into evidence)

3 MR. GREENBAUM: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. GREENBAUM: The Government passes the witness, Your  
6 Honor.

7 THE COURT: Cross?

8 MR. GORMAN: It's been a while since I talked to Agent  
9 Barkley, Your Honor. But no questions.

10 THE COURT: Okay. You may step down. Thank you, sir.

11 THE WITNESS: Thank you, sir.

12 (Witness excused)

13 THE COURT: All right. This is a good time for us to  
14 take an afternoon break. You know, if I needed to take one 30  
15 minutes ago, you know I need to take one now. So I need one too.  
16 Some of you look like you're filling up, you're ready to go.

17 So we're going to take a short break. You're going to  
18 leave your notebooks here. You're going to remember your  
19 instructions. We're not talking about the case. Let's make it a  
20 15-minute one. That's a good break. But you need time to go to  
21 the restroom and whatnot. You got way more men than women, so  
22 y'all can switch it up. You don't have to just go men's,  
23 women's. Y'all can decide how to do that.

24 Let's see. Are we okay working 'til 5:30 today, or is  
25 that too late? If that's too late for any one of you, I'll stop

1 at five. 5:30's okay? All right. Good. Can I hear six? Can I  
2 hear, do I hear six? I'll get you 'til, like, 8:30 or 9:00 if  
3 you want to, but that's up to you.

4 If y'all want something later than 5:30, tell  
5 Mr. Whitehead and we'll figure that out. We'll do whatever y'all  
6 want to do. All right? With that, we'll see you back here in 15  
7 minutes. Have a nice break. Let's rise for the jury, please.

8 (Jury out at 3:31 p.m.)

9 THE COURT: That was cumbersome. All right. Let's --  
10 outside the presence of the jury. Please have a seat. I mean,  
11 that was cumbersome, y'all. There probably was a better way to  
12 do that, I don't know. But I'll leave it for y'all to try your  
13 cases, obviously. That was rough.

14 All right. So next witness is going to be the --

15 MR. GREENBAUM: It's going to be Coleman Boring, Your  
16 Honor.

17 THE COURT: Coleman Boring?

18 MR. GREENBAUM: Coleman Boring, yes, sir.

19 THE COURT: Boring?

20 MR. GREENBAUM: Yes, sir.

21 THE COURT: All right. Hope he's not boring.

22 MR. GREENBAUM: He's going to be exciting, Judge.

23 THE COURT: Coleman Exciting. He can be up here, have  
24 him up here when we start back at a quarter 'til.

25 MR. GREENBAUM: Yes, sir.

1 THE COURT: Or thereabouts. Mr. O'Neal, you're going  
2 to have to wait on us. Your client's here.

3 MR. O'NEAL: Yes, sir.

4 THE COURT: Your client is here. But you're going to  
5 have to wait on us 'til we're done, okay?

6 MR. O'NEAL: Oh, I thought you were going to do it  
7 during this break.

8 THE COURT: No. I don't think we can do it, not with  
9 you talking.

10 All right. So have him up here. Mr. Greenbaum,  
11 Mr. Cayton, anything you need to take up outside the presence?

12 MR. GREENBAUM: No, Your Honor.

13 THE COURT: Ms. Bataller -- I mean, I called you  
14 Balatar a moment ago. I'm sorry. It was --

15 MS. BATALLER-SCHNEIDER: You know, I answer to that  
16 too, Your Honor. It's fine.

17 THE COURT: As soon as I said it I was like --

18 MS. BATALLER-SCHNEIDER: Whatever you want.

19 THE COURT: -- that's not her name. I thought I'd make  
20 a bigger deal out of it if I could apologize though. So,  
21 Mr. Gorman, Ms. Bataller --

22 MS. BATALLER-SCHNEIDER: That's pretty good. That's  
23 pretty good.

24 THE COURT: Anything y'all want to take up before we  
25 take a break?

1 MS. BATALLER-SCHNEIDER: No, Your Honor. Thank you.

2 THE COURT: All right. Mr. Perkins, we'll get you a  
3 break and we'll take one, too. See y'all back here at quarter  
4 'til. Thank you all.

5 (Recess at 3:34 p.m./Reconvene at 3:47 p.m.)

6 (Outside the presence of the jury; defendant present)

7 THE CLERK: All rise.

8 THE COURT: All right. Very well. We're ready?  
9 Government need anything outside the presence?

10 MR. GREENBAUM: I don't know if Defense wanted to raise  
11 a possible objection. I told them about a statement that's  
12 alleged that was made by their defendant.

13 THE COURT: Okay.

14 MR. GREENBAUM: And so I don't know if they had an  
15 objection to that. And so if they did --

16 THE COURT: On their client?

17 MR. GREENBAUM: Of Mr. Perkins, yes, sir.

18 MS. BATALLER-SCHNEIDER: Yes, Your Honor.

19 And I apologize. I just, when they told me that this  
20 agent was going to be testifying, it reminded me that after the  
21 deadline to give us discovery, the Government sent us an email  
22 that Agent Boring would be testifying to something that was not  
23 in discovery, something about when he had Mr. Perkins outside of  
24 the home that he -- and the Government can maybe get the correct  
25 wording, but that he said that I don't know how you got past my

1       VPNs. That would be cumulative evidence.

2               THE COURT: Oh, I see. Mr. --

3               MS. BATALLER-SCHNEIDER: And also, we did not receive  
4 notice on time.

5               THE COURT: Mr. Greenbaum, why was this late?

6               MR. GREENBAUM: Judge, in quick response, Your Honor,  
7 this was tendered over, so the record's clear, on Friday, Your  
8 Honor, the 15th. As trial prep --

9               THE COURT: Which is after the deadline, though.

10              MR. GREENBAUM: It was after the deadline. Yes, Your  
11 Honor. So I want to make that clear. As we trial prepped and we  
12 talked to Mr. Boring, we found this out. So this wasn't  
13 something that was in our ROI or anything. This was just in our  
14 trial discussion.

15              So when we found this out, obviously we disclosed this  
16 to Defense. The Government does wish to get into it. I  
17 understand the Defense's objection to cumulative. However, Your  
18 Honor, I think they have -- I think it goes to state of mind,  
19 Your Honor. And the statement would be something to the effect  
20 what -- and I just proffer this, what's going on, you guys got  
21 this information illegally. There's no way you got passed my  
22 VPN.

23              And so since they're saying that basically by raising  
24 certain sanity in this case, Your Honor, I think this does go to  
25 the state of mind. He knows that illegal actions, he knows that

1 something about computers is going wrong with his house. Before  
2 anything else, what this statement I would proffer was just given  
3 by the defendant spontaneously against his interest without  
4 questioning by Mr. Boring. So the Government does wish to get  
5 into that, Your Honor.

6 THE COURT: All right. I'll disallow it for now. If I  
7 feel like the door's been opened, or you all do, you can  
8 approach.

9 MR. GREENBAUM: Okay.

10 THE COURT: Depending on where the Defense goes with  
11 this witness or other witnesses. I think it's very likely it may  
12 come in later. But I'm not going to prejudge that. I'll  
13 disallow it now. Unless -- obviously everybody knows about it  
14 now.

15 MR. GREENBAUM: Yes, Your Honor.

16 THE COURT: And so if somebody opens that door, we'll  
17 -- I'll consider it at the time. And then I realize it's not in  
18 response to -- allegedly it's not in response to a question. But  
19 this is something that the Defense I think has a right to know at  
20 an early stage where they could move to suppress it or whatever  
21 there may be. I mean, so that's just I just don't think that's  
22 fair.

23 Now that they know about it, and they knew about it  
24 since Friday, I get that. I'm glad y'all thought of it before  
25 this agent testified, Defense. But so with that, we're not going



1 to get into that right now.

2 MR. GREENBAUM: Yes, Your Honor.

3 THE COURT: Because I don't think that's fair play.  
4 But it could become -- it's certainly relevant. It could become  
5 admissible I think, at least in my mind, depending upon the  
6 Defense --

7 MR. GREENBAUM: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. GREENBAUM: With that being said then, the  
10 Government would like to call a different witness, Your Honor.

11 THE COURT: Okay.

12 MR. GREENBAUM: And that's going to be --

13 THE COURT: They really don't like you.

14 MR. GREENBAUM: And it's going to be Ms. Michelle  
15 Wilson, Your Honor.

16 THE COURT: Okay. Have Ms. Wilson come on in before we  
17 bring the jury in. That way they don't have to wait on her.

18 MR. GREENBAUM: Yes, Your Honor.

19 THE COURT: Did they say they wanted to stay later than  
20 5:30? Okay. Mr. O'Neal wanted to stay late.

21 UNIDENTIFIED SPEAKER: Yeah, Mr. O'Neal until, like,  
22 seven.

23 THE COURT: You're keeping Mr. O'Neal 'til seven.  
24 He'll keep me 'til seven or later, probably.

25 UNIDENTIFIED SPEAKER: That he will.

Wilson - Direct/Greenbaum

154

1 MR. O'NEAL: I would have been done by now.

2 UNIDENTIFIED SPEAKER: No, he's just saying that.

3 THE COURT: Yeah, exactly. I know how he is.

4 UNIDENTIFIED SPEAKER: Once up there, it's a whole  
5 other story.

6 (Pause)

7 THE COURT: Let's bring the jury in.

8 Tell you what. If you want, go ahead and come on up  
9 here. You're going to stand up here. And we'll all sit down  
10 except you stay standing. I'll ask who's the next witness, and  
11 he'll call your name.

12 (Jury in at 3:52 p.m.)

13 THE COURT: Let's be seated, please. Thank you.

14 Mr. Greenbaum, your next witness is?

15 MR. GREENBAUM: Yes, Your Honor. Michelle Wilson, Your  
16 Honor, with DPS.

17 THE COURT: If you can raise your right hand, please,  
18 and be sworn.

19 MICHELLE WILSON, GOVERNMENT'S WITNESS, SWORN

20 THE COURT: You may have a seat and adjust that  
21 microphone. And, Mr. Greenbaum, you may proceed whenever you're  
22 ready.

23 MR. GREENBAUM: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. GREENBAUM:

Wilson - Direct/Greenbaum

155

1 Q Ma'am, can you introduce yourself to the jury, please?

2 A My name is Michelle Wilson.

3 Q And can you spell out your last name for the record, ma'am?

4 A W-I-L-S-O-N.

5 Q And, Ms. Wilson, how are you employed?

6 A I am currently a special agent with the Texas Department of  
7 Public Safety Criminal Investigations Division, Investigative  
8 Support section.

9 Q Yes, ma'am. And I think you might have answered, but what  
10 are some of your current duties there? Do you -- can you tell  
11 the jury a little bit about that?

12 A Yes. I work with the Investigative Support Section, and I  
13 assist with interviews.

14 Q So part of the things that you do for DPS as an investigator  
15 is conduct interviews. Is that correct?

16 A Yes. That's correct.

17 Q Okay. And prior to this, how long have you been working or  
18 employed with DPS?

19 A I have been employed with DPS for the past 11 years. I came  
20 in 2010.

21 Q Yes, ma'am. And prior to that, do you have any other type  
22 of law enforcement experience or military experience you could  
23 briefly tell us about?

24 A Yes. I joined the military in 2001 right before September  
25 11th. And then I served five years as a military police officer.

Wilson - Direct/Greenbaum

156

1 Q Okay. Now going back to this case, were you asked to do an  
2 interview with an individual by the name of Thomas -- I'm sorry,  
3 Thomas Scott Perkins.

4 A Yes.

5 Q And if -- and did you actually do an interview with  
6 Mr. Thomas Scott Perkins?

7 A I did.

8 Q Okay. And do you remember when you actually did that  
9 interview with Mr. Thomas Scott Perkins?

10 A Do you mind if I look at the exact date?

11 Q Yes, if you need to refer back to your notes or --

12 A Okay. It would have been on the 9th of January, 2020.

13 Q Okay.

14 A 2020.

15 Q And if you see Mr. Thomas Scott Perkins in the courtroom  
16 today, can you point him out and identify an article of clothing  
17 that he's wearing?

18 A Gentleman to my left wearing a blue colored shirt, black  
19 jacket, glasses.

20 MR. GREENBAUM: May the record reflect the witness has  
21 identified the defendant in this case, Mr. Thomas Scott Perkins.

22 THE COURT: It shall so reflect.

23 BY MR. GREENBAUM:

24 Q Prior to speaking to Mr. Perkins, did you do something  
25 called Miranda warnings?

Wilson - Direct/Greenbaum

157

1 A I did.

2 Q Okay. In this case, did you actually execute Miranda  
3 warnings?

4 A I read it aloud to him, and he signed the document. Yes,  
5 sir.

6 Q Okay. Let me have you turn, it's going to be in that white  
7 binder there, to Government's Exhibit Number 39. And when you're  
8 done, let me know and I'll have a couple questions for you.

9 A Yes.

10 Q Are you familiar with that document, whatever Government's  
11 number 39 is?

12 A Yes. It's the waiver of rights form we use.

13 Q Okay. And is that a fair and accurate copy of the actual  
14 original?

15 A It is.

16 Q Okay. And who does this waiver of rights form pertain to?

17 A Mr. Perkins.

18 Q Okay. And to the best of your knowledge, has it been  
19 altered or tampered with in any way?

20 A No, sir.

21 MR. GREENBAUM: Okay. At this time, Your Honor,  
22 Government would move to admit Government's Exhibit Number 39  
23 into the record.

24 THE COURT: Any objections?

25 MS. BATALLER-SCHNEIDER: No objection.

Wilson - Direct/Greenbaum

158

1 THE COURT: Government's Exhibit 39 is admitted without  
2 objection.

3 (Government's Exhibit 39 admitted into evidence)

4 MR. GREENBAUM: Permission to publish, Your Honor.

5 THE COURT: Yes, sir, you may.

6 MR. GREENBAUM: Thank you, Your Honor.

7 BY MR. GREENBAUM:

8 Q Okay. Let's first start -- let's just start at the  
9 beginning part. It says State of Texas --

10 THE COURT: Be sure you speak up, Mr. Greenbaum.

11 MR. GREENBAUM: Yes, Your Honor. I apologize.

12 BY MR. GREENBAUM:

13 Q It first starts State of Texas, County of Pecos, Fort  
14 Stockton, correct?

15 A That's correct.

16 Q And is that in the Western District of Texas?

17 A That's correct.

18 Q Okay. And then we have the -- what's the date on this  
19 document?

20 A Thursday, January 9th, 2020.

21 Q Okay. And Special Agent, who is that person?

22 A Myself.

23 Q Okay. And who is this person here that's being advised?

24 A Thomas Perkins.

25 Q Okay. And would you have had read him these Miranda

Wilson - Direct/Greenbaum

159

1 warnings?

2 A Yes, sir.

3 Q Okay. Would he have had the chance to review them, read  
4 them if he wanted to?

5 A Yes, sir.

6 Q Okay. And furthermore, after he was read these Miranda  
7 warnings, what happened next?

8 A After I advised him, he signed a writ acknowledgment that I  
9 read them and that he understood the rights as he was read.

10 Q Okay. And so it says I knowingly, intelligently, and  
11 voluntarily waive these rights set forth in this document. Is  
12 that right?

13 A Yes, sir.

14 Q Okay. And whose signature is that? Is that your signature  
15 or somebody else's signature?

16 A Thomas Perkins.

17 Q Okay. So that would be the defendant's signature in this  
18 case?

19 A Yes, sir.

20 Q Okay. And then further down, the examiner, it has a  
21 signature there. Whose signature is that, obviously?

22 A That's mine.

23 Q So you read him these warnings, correct?

24 A Yes, sir.

25 Q And then after you did these warnings, then you proceeded to

Wilson - Direct/Greenbaum

160

1 ask him a few questions. Is that right?

2 A That's correct.

3 Q Okay. I specifically want to ask you a couple questions.  
4 Did you ask him anything in regards to during your interview  
5 about the use of VPNs?

6 A It did come up. Yes, sir.

7 Q Okay. And I don't know if you have your notes, but I'm  
8 specifically looking at 30.16 from the interview. Did he say why  
9 he used VPNs?

10 A He advised that he used them for risky downloads.

11 Q Okay. And what is a VPN, if you know?

12 A It's a virtual private network.

13 Q Okay. And looking down again at the notes, and I don't know  
14 if yours are the same as mine, but I have it 33.17. Did you ask  
15 if he had ever searched for a term called PTHC?

16 A Yes, sir. That is correct.

17 Q And what was his response when you asked him if he had ever  
18 searched for PTHC?

19 A He had said that he had searched for basically everything  
20 that he possibly could. And then I clarified with him, like,  
21 preteen hardcore, and he acknowledged with a head nod.

22 Q Okay. So when you clarified what PTHC meant as far as him  
23 searching, he acknowledged by nodding his head that he had  
24 searched that, those terms?

25 A That's correct.



Wilson - Direct/Greenbaum

161

1 Q Okay. Is that synonymous, PTHC, for somebody, based on your  
2 training and experience, that's looking for child pornography?

3 A That is correct.

4 Q And going a little further down, and I have it at 43.12, did  
5 he say what his favorite age groups that he would look for and  
6 search for?

7 A He did. When I asked if there was any specific age range  
8 that he looked for, he said that his favorite to look for was  
9 eight, nine, or ten.

10 Q And was this in the context of child pornography?

11 A That's correct.

12 Q And in regards to I have it at 51.09, did he talk about  
13 basically sharing or the share feature on his computer that would  
14 have distributed child pornography?

15 A That's correct. He was talking about the browser that he  
16 was using having the share function, that he stated that he  
17 should have disabled the share function knowing that he should  
18 have disabled that feature in order not to share with others.

19 Q And did he say if he was worried about that feature  
20 basically sending out child pornography?

21 A He told me at the time that he wasn't worried about it  
22 because he used what he called a double VPN or a secondary layer  
23 of the VPN meaning he had two VPN services. So he advised that  
24 it was leakproof to me.

25 Q So on his own words he had said that he had used multiple

Wilson - Direct/Greenbaum

162

1 VPNs so there wouldn't be any leaks, so it couldn't be found, Is  
2 that correct, or caught?

3 A That is correct.

4 Q Okay. And then in regards to did he say, and I move along  
5 at 54.35, did he say was he afraid of any sort of consequences or  
6 did he make any statements in regards to that?

7 A He advised that he had been using the browser for a period  
8 of time, and that he was afraid that if he continued to use it,  
9 that he was going to be found out, that he might be raided. And  
10 then he kind of made the statement well, that just happened.

11 Q So that's what exactly happened to him?

12 A Right.

13 Q Okay. And then in regards to, and again I go to 100.27 in  
14 my notes, what did he say about this whole ordeal?

15 A In reference to the child pornography and things of his  
16 likes, he said that he wasn't ashamed of it.

17 Q Okay.

18 (Pause)

19 MR. GREENBAUM: Judge, may I approach on something,  
20 Your Honor?

21 THE COURT: You may.

22 (Bench conference at 4:03 p.m.)

23 MR. GREENBAUM: Judge, I just did not want to violate  
24 any --

25 THE COURT: Outside the presence of the jury. Yes,

Wilson - Direct/Greenbaum

163

1 sir.

2 MR. GREENBAUM: Yes, Your Honor. I wanted to -- so one  
3 of the things she asked, did certain things get -- Lolita,  
4 preteen hardcore, and preteen softcore. So I was going to ask  
5 her those questions. But I just wanted to make sure to do it  
6 outside the presence of the jury before I got into that.

7 THE COURT: Okay. Anything?

8 MS. BATALLER-SCHNEIDER: I mean --

9 THE COURT: You've already gone into PTHC.

10 MR. GREENBAUM: Yes, sir.

11 MS. BATALLER-SCHNEIDER: Right.

12 THE COURT: Is the other one --

13 MR. GREENBAUM: Lolita.

14 THE COURT: -- PTSC?

15 MR. GREENBAUM: Preteen hardcore and preteen softcore  
16 are the other things he said he had searched, or agreed that he  
17 had searched.

18 MS. BATALLER-SCHNEIDER: Just cumulative and  
19 prejudicial, Your Honor.

20 THE COURT: I'll overrule the objection. But you'll  
21 have to objection if you want to. It's up to you. You've  
22 preserved it. I'll overrule it.

23 MS. BATALLER-SCHNEIDER: Okay.

24 THE COURT: But I'm not going to let him continue to  
25 say it. I mean, it's what he said.

Wilson - Direct/Greenbaum

164

1 MR. GREENBAUM: Yes. What happened was, Judge, he was  
2 asked and he agreed that's what he looked up, Your Honor.

3 MS. BATALLER-SCHNEIDER: That was the question.

4 MR. GREENBAUM: That was the question.

5 MS. BATALLER-SCHNEIDER: He didn't bring it up.

6 THE COURT: He didn't -- right.

7 MR. GREENBAUM: And he agreed to it basically.

8 THE COURT: Okay. Thank you.

9 (Bench conference ends at 4:04 p.m.)

10 BY MR. GREENBAUM:

11 Q Ma'am, going back to 33.17, did you ask him if he had  
12 searched a search term named Lolita?

13 A I did.

14 Q And what was his response to Lolita?

15 A The same as the PTHC. He nodded in agreement.

16 MS. BATALLER-SCHNEIDER: Your Honor, can we approach  
17 again?

18 THE COURT: Oh, of course.

19 (Bench conference at 4:05 p.m.)

20 MS. BATALLER-SCHNEIDER: I'm sorry.

21 THE COURT: Outside the presence of the jury. Yes,  
22 ma'am.

23 MS. BATALLER-SCHNEIDER: Yes. I apologize. I know you  
24 don't like to do this. But the question was asked all at once.  
25 So asking it over and over and over is even more prejudicial, and

Wilson - Direct/Greenbaum

165

1 that's not the way the question was --

2 MR. GREENBAUM: I can do all three at the same time.

3 THE COURT: Do it and get it over with.

4 MR. GREENBAUM: Yes.

5 MS. BATALLER-SCHNEIDER: Yeah.

6 MR. GREENBAUM: Yes. I'll do it all three.

7 THE COURT: That's what I want, too.

8 MR. GREENBAUM: Okay.

9 MS. BATALLER-SCHNEIDER: Okay, thank you.

10 MR. GREENBAUM: I can do that. Yes, Your Honor.

11 (Bench conference ends at 4:05 p.m.)

12 BY MR. GREENBAUM:

13 Q All right. Ma'am, going back to 33.17, was he asked if he  
14 had looked up terms such as Lolita, preteen hardcore, and preteen  
15 softcore?

16 A Yes, sir. That is correct.

17 Q And what was his response when he was asked if he looked  
18 those terms up?

19 A He nodded his head in agreement.

20 Q Okay. And what is the term Lolita and for child porn, as  
21 relevant based on your training and experience to child porn,  
22 child pornography?

23 A Typically like a nude modeling series that displays children  
24 sexually.

25 Q And the term preteen hardcore, based on your training and

Wilson - Cross/Bataller-Schneider

166

1 experience, what is that search for?

2 A Young children engaged in what would be considered hardcore  
3 sex acts.

4 Q And then in regards to the term preteen softcore, what would  
5 that be in correspondence to child pornography?

6 A Young children displayed in a sexual manner, not necessarily  
7 in a hardcore sex act.

8 MR. GREENBAUM: I pass the witness, Your Honor. Thank  
9 you.

10 THE COURT: Thank you.

11 CROSS-EXAMINATION

12 BY MS. BATALLER-SCHNEIDER:

13 Q Good afternoon, Agent Wilson.

14 A Hello.

15 Q Before you met Thomas, were you told that he was diagnosed  
16 with autism and schizophrenia?

17 A No, ma'am.

18 Q Do you have any training in interviewing people with autism  
19 or schizophrenia?

20 A Not specifically, no.

21 Q He did tell you, however, that he had a psych evaluation and  
22 as a result got on disability. Is that right?

23 A He told me that he had an evaluation for disability for  
24 schoolwork. Yes, ma'am.

25 Q And he confirmed to you that he doesn't take medication

Wilson - Cross/Battaller-Schneider

167

1     though, or he wasn't taking medication at that time. Is that  
2     right?

3     A     That's correct.

4     Q     And he told you he rarely leaves his home?

5     A     I'm sorry?

6     Q     He told you that he rarely leaves his home?

7     A     I believe he said he was unemployed.

8     Q     At one point in his conversation with you, Thomas told you  
9     about a succubus.

10    A     Yes, ma'am.

11    Q     And that's something that he described as a sex demon.

12    A     That's correct.

13    Q     And as far as you understand, that's not an actual, real  
14    living thing, correct?

15    A     Yes, ma'am.

16    Q     Okay. Just checking. But he did tell you this is something  
17    he can actually feel. Is that right?

18    A     That is correct.

19    Q     And described this sex demon as tormenting him for nine or  
20    ten years?

21    A     Yes. And he described that he also has learned to enjoy  
22    what has happened as well.

23    Q     Yeah. At this point he said that. But before, his comments  
24    would suggest to you that it was against his will. Is that  
25    right?

Wilson - Cross/Bataller-Schneider

168

1 A It could. Yes, ma'am.

2 Q He did make clear to you, however, that he's never had sex  
3 with an actual human being. Is that right?

4 A He did say that. Yes, ma'am.

5 Q And at one point when you were explaining to him why you  
6 were there, and one of the things that you said was to determine  
7 whether he was distributing child porn intentionally, he  
8 responded to you I wasn't distributing it intentionally. That's  
9 about minute 32, if that helps, 32.02.

10 A He -- he had told me that he knew that he had possessed it.  
11 That's correct.

12 Q And then afterwards he said I wasn't distributing it  
13 intentionally.

14 A That's possible. Yes, ma'am.

15 THE COURT: I'm sorry?

16 THE WITNESS: I don't recall him saying I wasn't  
17 distributing it intentionally. He -- I had asked him did you  
18 intentionally distribute this, and he said that he knew that  
19 there was stuff that he had been aware of in the past that he  
20 had. Yes, ma'am.

21 BY MS. BATALLER-SCHNEIDER:

22 Q Okay. Is that what you're talking about with --

23 A The possession. Yes, ma'am.

24 Q And then you had mentioned -- well let me -- would it  
25 refresh your recollection to hear a clip of that portion?



Wilson - Cross/Battaller-Schneider

169

1 A Yes, ma'am.

2 MS. BATALLER-SCHNEIDER: Your Honor, we need to do that  
3 outside the presence of the jury. It's just a clip of --

4 THE COURT: It's a clip that's not of an audio  
5 recording? It's not a --

6 MS. BATALLER-SCHNEIDER: It's a video.

7 THE COURT: It's not been introduced?

8 MS. BATALLER-SCHNEIDER: It's not been introduced.

9 THE COURT: Okay. Yeah. Let's take a very short  
10 break. Remember your instructions. You'll leave your notebooks  
11 here. And if you wouldn't go too far from the door, we'll get  
12 you right back in here. Thanks. Let's rise for the jury,  
13 please.

14 (Jury out at 4:10 p.m.)

15 THE COURT: All right. Let's be seated, please.  
16 Outside the presence of the jury. Can you play that real quick?

17 MS. BATALLER-SCHNEIDER: Yes, Your Honor. It should be  
18 very, very brief. It's going to be TP26 on the thumb drive. And  
19 then you have to play TP27 afterwards. So TP26 is going to be  
20 the question. And then TP27 is going to be his answer.

21 We're going to try to do it without speakers and see if  
22 she can hear it. And then if we need speakers, we'll use that.  
23 But it should be very brief.

24 THE COURT: If she needs to step down and listen to it,  
25 that's fine.

Wilson - Cross/Bataller-Schneider

170

1 MS. BATALLER-SCHNEIDER: Would that be easier?

2 (Audio plays at 4:12 p.m.)

3 THE COURT: We good?

4 MS. BATALLER-SCHNEIDER: We're good, Your Honor.

5 THE COURT: All right. Let's bring the jury back in,  
6 please. All rise for the jury.

7 (Jury in at 4:13 p.m.)

8 THE COURT: Let's be seated, please. Thank you. I  
9 believe you were going to re-ask the question.

10 MS. BATALLER-SCHNEIDER: Yes.

11 BY MS. BATALLER-SCHNEIDER:

12 Q Did that refresh your recollection?

13 A Yes, ma'am.

14 Q So I'll re-ask you the question. After you told him you  
15 were there to determine whether he was distributing child  
16 pornography intentionally, he said to you that he said I wasn't  
17 distributing it intentionally.

18 A That is correct.

19 Q And the statement that he made that he should have disabled  
20 it, that was well after that in the interview, correct?

21 A That was later on. Yes, ma'am.

22 Q Thomas told you multiple times that he would not want to  
23 have sex with children, correct?

24 A That's correct.

25 Q And he told you as well that he does not want to harm

Wilson - Cross/Battaller-Schneider

171

1 children.

2 A That's correct.

3 MS. BATALLER-SCHNEIDER: One moment, please. Nothing  
4 further.

5 THE COURT: All right. Redirect?

6 MR. GREENBAUM: Judge, may we approach, Your Honor?

7 THE COURT: Yes, sir. You may.

8 MR. GREENBAUM: Thank you.

9 THE COURT: Forgive us for a few more minutes. Feel  
10 free to stand if you want.

11 (Bench conference at 4:15 p.m.)

12 MR. GREENBAUM: Judge, I first --

13 THE COURT: Hand on a second.

14 MR. GREENBAUM: Yes, Your Honor.

15 THE COURT: I get to run --

16 MR. GREENBAUM: Sorry.

17 THE COURT: Outside the presence of the jury, because  
18 that's kind of important to know, right, later on appeal.  
19 Mr. Greenbaum, what did you need.

20 MR. GREENBAUM: I apologize, Judge.

21 THE COURT: Stop apologizing.

22 MR. GREENBAUM: Yes, Your Honor. So I think the door  
23 has now been open and --

24 THE COURT: I agree.

25 MR. GREENBAUM: So with the statements that the

Wilson - Redirect/Greenbaum

172

1 defendant allegedly made was it would have been very -- in  
2 regards to having sex with a 12 -- in a very secure environment,  
3 I really wouldn't want to get caught. So I think I should be  
4 allowed to get into that.

5 One, it would go to state of mind. Two, in regards to  
6 saying that he doesn't want to have sex with children, that's the  
7 same, correct, because there's a statement contrary to that that  
8 he himself made.

9 THE COURT: Ms. Bataller?

10 MS. BATALLER-SCHNEIDER: I understand his point, Your  
11 Honor.

12 THE COURT: I think that's right. And I think we all  
13 agree. I believe the prejudicial effect of it, certainly  
14 prejudicial.

15 MS. BATALLER-SCHNEIDER: It's very prejudicial, yes.

16 THE COURT: Does not outweigh the probative value. Now  
17 that that door's been opened, you may ask about that.

18 MR. GREENBAUM: Yes, Your Honor.

19 THE COURT: For those reasons, and then move on.

20 MR. GREENBAUM: Yes, sir.

21 THE COURT: Okay.

22 MS. BATALLER-SCHNEIDER: Okay.

23 MR. GREENBAUM: Thank you, Judge.

24 (Bench conference ends at 4:16 p.m.)

25 REDIRECT EXAMINATION

1 BY MR. GREENBAUM:

2 Q Ma'am, I want to go back to your interview in regards to I  
3 believe I have it noted as one hour, 16 and 20, in regards to  
4 this defendant, did he say anything in regards to him having some  
5 sort of relationship in regards to having sex with a 12-year-old,  
6 or some sort of thought process to that?

7 A Yes.

8 So we questioned him then would he have sex with a child.  
9 And he made the statements that he wouldn't harm a child. And I  
10 agreed that he did not want to harm a child. However, I asked  
11 given the opportunity if he would have sex with a child. And he  
12 said that if a 12 to 13-year-old child initiated the sex, that he  
13 would be willing to do that.

14 Q Okay. And did he say anything about the type of environment  
15 that it would have to be?

16 A He eluded to the fact and stated that it would have to be a  
17 secure environment where he could lock the door or be in a place  
18 not like his apartment or something where somebody could come in.

19 Q And why did he say he wanted to do it that way, in his  
20 words?

21 A So he really didn't want to get caught.

22 MR. GREENBAUM: I pass the witness, Your Honor.

23 THE COURT: Ma'am?

24 MS. BATALLER-SCHNEIDER: If I could, Your Honor, just  
25 briefly?

Wilson - Recross/Bataller-Schneider

174

1 THE COURT: Of course.

2 RECROSS-EXAMINATION

3 BY MS. BATALLER-SCHNEIDER:

4 Q Those answers about 12- to 13-year-olds came as a result of  
5 you asking Thomas on multiple occasions what is the youngest age  
6 of someone that he would consider having sex with. Is that  
7 right?

8 A That's correct.

9 Q And he made it very clear that he didn't believe he would  
10 ever be in that situation, correct?

11 A That's correct.

12 Q And that it would be -- it would not be a situation where he  
13 would take on that role. It would have to be them wanting to  
14 take on that role?

15 A Correct. He said the child would have to initiate.

16 MS. BATALLER-SCHNEIDER: Nothing further.

17 THE COURT: Thank you. Anything further?

18 MR. GREENBAUM: Nothing further, Your Honor.

19 THE COURT: You may step down. Thank you so much.

20 (Witness excused)

21 THE COURT: Your next witness, Mr. Greenbaum?

22 MR. CAYTON: Your Honor, the Government would call  
23 Special Agent Tony Yanez.

24 THE COURT: Tony?

25 MR. CAYTON: Yanez.

1 THE COURT: Okay. Thank you.

2 MR. CAYTON: Your Honor, may we approach briefly  
3 while --

4 THE COURT: Sure.

5 MR. CAYTON: -- he's coming in.

6 THE COURT: While he's coming.

7 (Bench conference began at 4:18 p.m.)

8 MR. CAYTON: Your Honor, I know that the --

9 THE COURT: Hang on a second. I get to start.

10 MR. CAYTON: I'm sorry.

11 THE COURT: Outside the presence of the jury because  
12 that's kind of important --

13 MR. CAYTON: It is.

14 THE COURT: -- on appeal to know. Right?

15 MR. CAYTON: Yes, sir.

16 THE COURT: That conversation, at this point you guys  
17 don't need to come up here and start just talking.

18 MR. CAYTON: Yes, sir.

19 THE COURT: Outside the presence of the jury. Yes,  
20 sir.

21 MR. CAYTON: I just wanted to let the Court know this  
22 witness may be a little long.

23 THE COURT: sure.

24 MR. CAYTON: So if the court ever finds a natural  
25 stopping point or anything like that.

1 THE COURT: We're going to go 'til 5:30 anyway.

2 MR. CAYTON: Yeah.

3 THE COURT: We don't need another break.

4 MR. CAYTON: Probably -- I could probably get done with  
5 direct on him. I'm sure Defense will probably have a lengthy  
6 cross.

7 THE COURT: Okay.

8 MR. GORMAN: Your Honor, a request on this. And again,  
9 what we talked with this morning with the report, there's a  
10 possibility of this, and I don't know if they're going to go down  
11 that road. But talking about volumes of images, obviously 1006,  
12 if he's doing that with no listing of files, no evidence, no  
13 physical of any of this stuff, that's very -- obviously that's  
14 pretty prejudicial.

15 THE COURT: Are you going to ask about -- what are you  
16 asking about?

17 MR. CAYTON: I'm having him go through his analysis.  
18 We did discover when we got it, I believe it was on Saturday,  
19 some metadata for some of the -- for the videos that I had parsed  
20 out for each drive. So, like, five for some, three for another.  
21 I mean, I think earlier we talked about getting into, like, the  
22 total number of images that he said he found.

23 MR. GORMAN: Yeah, that's --

24 MR. CAYTON: And that's listed in the report. But I  
25 don't have --



1 THE COURT: He's going to tell you that he found X  
2 number of images or videos?

3 MR. CAYTON: Yeah.

4 THE COURT: What else?

5 MR. CAYTON: I mean, then I'm going to have him go  
6 through the forensic analysis in each drive that he found content  
7 on and what he did with it. He sent it over --

8 THE COURT: I don't think that's a problem.  
9 Mr. Gorman, make sure I'm not misstating --

10 MR. GORMAN: Yeah. My concern on this, Your Honor, is  
11 he's -- ultimately there is no way this is not a case of, like, a  
12 summary where we're saying you've received all these, you've been  
13 able to review these images and ultimately we know that there are  
14 73,000 of these images.

15 That's kind of the volume he's talking about. And  
16 obviously we have never seen this stuff identified. And a lot of  
17 this stuff even when we saw a viewing was probably 85 percent  
18 inaccurate.

19 MR. CAYTON: And I can just ask him (indiscernible). I  
20 can go talk to him right now and say make sure you say suspected  
21 child pornography if --

22 THE COURT: Make sure you say --

23 MR. CAYTON: Suspected. Suspected child pornography or  
24 something like that. I know it's an issue --

25 MR. GORMAN: It softens the blow there.

1 MR. CAYTON: I know there's also an issue with the  
2 legal definition.

3 THE COURT: Would you prefer them to bring in the  
4 images? You're going to say they're cumulative.

5 MR. GORMAN: Not in terms of that, Your Honor.

6 He's making a summary of a report we never received  
7 meaning if we had sat down there and said okay, meaning when we  
8 get these reports, and you've likely seen them before Your Honor,  
9 they identify child erotica, suspected child pornography. We see  
10 the images and there's no doubt as to what it is.

11 This one here is really coming out of left field  
12 because it was never a report that wrote --

13 MR. CAYTON: But those are done in a secured  
14 environment because there is contraband on it. We don't just  
15 hand those over to the Defense. That's part of the -- I mean,  
16 the Defense could have had an expert come over to --

17 MR. GORMAN: We did --

18 MR. CAYTON: -- El Paso and --

19 MR. GORMAN: There was somebody that looked at the  
20 stuff. But again there were no listings of this stuff. It took  
21 them essentially ten months to process this.

22 THE COURT: Were these images available for view?

23 MR. CAYTON: Yes. And my understanding is Defense  
24 actually -- I mean, I wasn't the attorney on the case at the  
25 time. The Defense actually went over to HIS Alpine and viewed --

1 THE COURT: (Indiscernible) come up here and --

2 MR. GORMAN: It was Andrew Weber then, Your Honor.

3 So yeah.

4 MR. CAYTON: I mean he was the AUSA. I mean, there  
5 were -- there was the ability to go view it. Defense did come  
6 over and view it.

7 MR. GORMAN: That was me, Your Honor.

8 MR. CAYTON: It sounds like a CFA or another expert  
9 went over to El Paso to the CFA's office and had a chance to view  
10 it. And as far as a report being generated, the software, I  
11 mean, Agent Yanez has told me the software was made available to  
12 the other expert. And he -- I mean, he told me yesterday he  
13 actually --

14 THE COURT: Who told you that, Yanez?

15 MR. CAYTON: Agent Yanez. And he told me that he  
16 actually believed that the expert made some of his own reports.

17 MR. GORMAN: He collected data, Your Honor.

18 THE COURT: Who was your expert?

19 MR. GORMAN: The expert was essentially a group we used  
20 out of -- I'm trying to remember. It's an east Texas group. But  
21 they didn't have a report to work out of. So largely what they  
22 did was it was just a collection of --

23 THE COURT: (Indiscernible) review without the report,  
24 right?

25 MR. CAYTON: I mean, the report's (indiscernible) and

1 generating a PDF document. I mean, but they can go through all  
2 that data that he wants in a report was available to their expert  
3 to review.

4 MR. GORMAN: We can make this simple. Your Honor,  
5 since we've never broken this out, again, part of this in terms  
6 of having never seen which is which in terms of --

7 THE COURT: I'm trying to understand. If the images  
8 were available for your expert's review --

9 MR. GORMAN: Two days, Your Honor, when what, they had  
10 ten months.

11 THE COURT: It was they were available. And now you're  
12 saying there's no report so you really shouldn't be able to get  
13 into that. That's a suspected child porn images, right?

14 MR. GORMAN: In terms of the -- again, Your Honor, in  
15 order to simplify this process, in terms of, like, what these  
16 experts do, for meaningful access, and I'm not going to be less  
17 than candid on this, Your Honor, we arranged two days in November  
18 without the benefit of a report where they could do data  
19 collection essentially to try and get through this.

20 It was two days, that was all they were able to do,  
21 \$14,000 to the Government. And ultimately, the report was  
22 meaningless because they didn't have that guiding hand of what  
23 essentially the suspected stuff was. It was 20 terabytes.

24 THE COURT: It was made available to them, correct?

25 MR. CAYTON: Yes, Your Honor.

1 THE COURT: Could they have used -- whose decision was  
2 it to only let them look for two days, or was it their own time  
3 limits?

4 MR. GORMAN: In terms of that was the request. Yes,  
5 Your Honor.

6 THE COURT: All right. Well I'm going to allow him to  
7 make the testimony -- to testify. You can cross-examine him,  
8 obviously. Obviously you will. I know that. And you're talking  
9 about you wouldn't be less than candid. I know you are. I mean,  
10 I believe what you all are saying. I understand.

11 This is voluminous, obviously. The Government made  
12 those images, possibly videos, whatever there were, the metadata  
13 available. I'm convinced of that. That's what you're telling  
14 me.

15 MR. CAYTON: Yes, sir. And I mean, if the experts were  
16 going through it, then yes.

17 THE COURT: The experts were going through it back in  
18 November.

19 MR. GORMAN: It was November.

20 THE COURT: You're saying there wasn't a report. So it  
21 was rudderless. There was no way to really find --

22 MR. GORMAN: With 20 trillion bytes of data to use two  
23 days.

24 THE COURT: Right.

25 MR. GORMAN: Again --

Yanez - Direct/Cayton

182

1 THE COURT: But again, it was their decision for the  
2 two days, right? I mean, it was available since November,  
3 correct?

4 MR. GORMAN: Right, Your Honor.

5 THE COURT: I mean, this is July. And I'm not saying  
6 it wouldn't have been expensive. I am saying though that it was  
7 available. So I'm going to allow that. And I'll overrule your  
8 objection, okay?

9 MR. GORMAN: All right, Your Honor.

10 MR. CAYTON: Thank you.

11 (Bench conference ends at 4:25 p.m.)

12 THE COURT: Sir, if you'd raise your right hand,  
13 please.

14 ANTONIO YANEZ, GOVERNMENT'S WITNESS, SWORN

15 THE COURT: You can have a seat and adjust yourself to  
16 that microphone. Mr. Cayton, you may proceed whenever you're  
17 ready.

18 MR. CAYTON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. CAYTON:

21 Q Can you please state your name for the Court?

22 A Antonio Yanez.

23 Q Can you please spell your last name?

24 A Y-A-N-E-Z.

25 Q And where are you currently employed?

Yanez - Direct/Cayton

183

1 A Homeland Security Investigations.

2 Q What is your current duty title?

3 A Special Agent Computer Forensics Agent.

4 Q And how long have you been a computer forensics agent?

5 A Since 2013.

6 Q And how long have you been a special agent for?

7 A Since 2008.

8 Q Is it common for special agents to become computer forensics  
9 agents?

10 A Yes.

11 Q And do we hire, or does Homeland Security hire anyone else  
12 besides special agents to become computer forensics agents?

13 A The Homeland Security also hires other individuals who could  
14 do the computer forensics, as well.

15 Q What kind of training did you go through to become a  
16 computer forensics agent?

17 A The agency provided basic and advanced evidence recovery  
18 training.

19 Q And is that it?

20 A No. I've also been involved in mobile forensics training,  
21 vehicle forensics training, network forensics training. Also,  
22 Windows and Macintosh forensics training.

23 Q Now do you use different -- or what tools do you use to do  
24 computer forensics?

25 A To do computer forensics, we use laptops and write blockers,

Yanez - Direct/Cayton

184

1 hardware write blockers to make copies of evidence. And we also  
2 use other forensic software to parse out the, or to -- to pull  
3 evidence from those images or copies, and to identify different  
4 types of files in those evidence types.

5 Q Start from the beginning. You said you use a write blocker.  
6 What's a write blocker?

7 A A write blocker's a hardware device that allows myself to  
8 gain access to the hard drives without making any changes to the  
9 hard drives by preventing changes to the hard drive.

10 Q And when you're talking about a hard drive, describe for the  
11 jury, are you talking about, like, the internal hard drive maybe  
12 on a desktop, or are you talking about that little internal hard  
13 drive on a laptop? Or are we talking about a portable hard  
14 drive? Or are we talking about all of them?

15 A It could be all of them. It could be a laptop hard drive  
16 that's in -- a hard drive that's in the laptop or is in a desktop  
17 computer. It could be anything from a USB stick, it could be an  
18 external hard drive that has a hard drive, either a smaller hard  
19 drive or a larger hard drive in size.

20 Q What about a little, like, SD flash card or something you'd  
21 put in a camera?

22 A SD cards, as well. Yes, SD cards and micro SD cards which  
23 are usually found in mobile phones or mobile devices.

24 Q You also talked about training doing say, like, auto  
25 forensics.



Yanez - Direct/Cayton

185

1 A Yes.

2 Q That uses different types of tools, I'm assuming?

3 A Yes.

4 Q Okay. So for a type of computer storage, we have a write  
5 blocker. That's what we start off with. What do we do next? Or  
6 what other tool do we use after the write blocker?

7 A With the write blocker, we use the laptop, and we use under  
8 the piece of software that allows us to -- we connect the write  
9 blocker to the laptop and let the other software, in this case I  
10 used FTK Imager, connects the computer to the external device or  
11 the hard drive and allows me to preview the device and make an  
12 image or copy of it to another location for storage and use.

13 Q And when we're talking about an image of a hard drive, are  
14 you talking about, like, taking a photo of the hard drive or  
15 something different?

16 A No.

17 An image is like a bit-for-bit copy. It's an actual copy of  
18 the content of the hard drive that are stored as a file or as a  
19 collection of files that I can later use in forensic software to  
20 analyze it.

21 Q So if I have a hard drive and I've only used up say ten  
22 percent of that drive, and I do an image of it, am I only carving  
23 out that ten percent I've used up?

24 A It depends on what type of image you create. If you're  
25 going to only make a copy of the ten percent that you used,

Yanez - Direct/Cayton

186

1 that's what we would call a logical image.

2 A logical image is only of the content on the hard drive.  
3 The physical image would be the entire content of the hard drive  
4 which is the unallocated space or anything that's not being used.

5 Q Now when you do a forensic analysis, are you using a logical  
6 or a physical image?

7 A We usually use the physical image.

8 Q Why?

9 A Because it would contain anything on the hard drive that has  
10 possibly been deleted but not been overwritten.

11 Q Okay. That's a really big statement you just made. So if  
12 you delete something on a hard drive, it's still there?

13 A Possibly yes, if it hasn't been overwritten by other data.

14 Q And how would it become overwritten by other data?

15 A If -- for instance, if something's deleted, it remains on  
16 the hard drive. It doesn't show up on the file system per se  
17 because that locator or that pointer to that file in the file  
18 system has been erased. But the content is on the hard drive  
19 until it is overwritten with new content.

20 Q Okay. So you make a -- you use a write blocker and then you  
21 make a physical image. And then how else do you do your  
22 analysis?

23 A Well, that physical image would go and add that physical  
24 image or the copy file into the forensic software. And the  
25 forensic software would go in and identify types of files, and in

Yanez - Direct/Cayton

187

1 this case would be image, pictures, or it would be videos per se,  
2 or any other types of files that are commonly found in operating  
3 systems.

4 Q Now you just described deleted files might still be there.  
5 When you do a forensic analysis, can you find only the files that  
6 were not deleted, or can you also find files that were deleted?

7 A You can also find files that have been deleted.

8 Q So anything that's still on that drive, whether it was  
9 deleted or not, as long as it hasn't been overwritten, you can  
10 look at it in that forensic software?

11 A Correct.

12 Q Now you talked about copying a drive, making an image for  
13 the purpose of doing your investigation. Why do you want to use  
14 an image versus the actual drive itself?

15 A It's a best practice to make an image and work with the  
16 image rather than the original evidence because we don't want to  
17 change any of the original evidence.

18 Q So you want to look for what you're looking for, but not  
19 affect the original?

20 A Correct.

21 Q Now when you're doing -- take a step back. What types of  
22 cases do you do computer forensics for?

23 A What types of cases I've worked computer forensics?

24 Q Yes.

25 A I've worked in child sexual exploitation cases. I've worked

Yanez - Direct/Cayton

188

1 in narcotics cases. I've worked fraud cases. I've worked with  
2 state and local authorities on homicides, murders, also drug  
3 cases.

4 Q So any type of case where potentially electronic information  
5 may be stored?

6 A Correct.

7 Q Is that fair to say?

8 A Yes.

9 Q And you talked about copying a little bit. So you make this  
10 image. Can you describe for the jury a little bit about how a  
11 file -- how copying a file from say one drive to another works?

12 A Well, when you copy a file from one drive to another, some  
13 attributes remain with the file and some will change. I believe  
14 with file copies, and depending on the operating system, the only  
15 thing that would change on the file copy would be the  
16 modification that I believe the access date and I believe the  
17 created date will remain the same.

18 Or the created date -- I'm sorry. The created date and the  
19 access date change. And I think the modification stays the same.

20 Q So you're talking about attributes that go along with each  
21 individual file. You can see that data, and when they copy it  
22 you can see some changes there?

23 A Correct.

24 As far as the dates and times because when something is  
25 created in a file system, and in this case if I copy a file from

Yanez - Direct/Cayton

189

1 a computer to an external drive or a USB drive, the created date  
2 changed because it's being crated on that USB drive from the  
3 computer or the hard drive.

4 Q Now when you make an image, you use the write blocker and  
5 then you make your forensic image, would all those dates change?

6 A Forensic image of the files, the -- excuse me, the  
7 attributes stay the same because it's an image and you're not  
8 making any changes to the files in the original evidence.

9 Q Even though you're making a copy?

10 A Yes because we have it connected to the write blocker. So  
11 it prevents us writing any information to the original evidence.

12 Q So if I have a laptop and I plug in a USB drive and I copy a  
13 file over, we're going to see some changes to that file. But if  
14 you plug in your special hardware and software and we copy the  
15 entire drive over, none of those files will change?

16 A If we create a forensic image of it, yes, correct.

17 Q So I want to direct your attention to the present case.  
18 Were you asked to do a forensic analysis on several devices that  
19 were seized in Fort Stockton, Texas on January 9th, 2020?

20 A Yes.

21 Q And were you informed what you were looking for when you  
22 were doing a forensic analysis?

23 A Yes.

24 Q Now how many devices were brought to you to do an analysis  
25 on?

Yanez - Direct/Cayton

190

1 A At the location or back at the office?

2 Q Oh, I'm sorry. Let me take a step back. Were you actually  
3 present at the location when the search warrant was being done?

4 A Yes.

5 Q And for what purpose?

6 A To preview evidence items for -- for CSAM, or child sexual  
7 abuse material.

8 Q And why do you want to preview files at the date of a search  
9 warrant?

10 A To identify those files and to proceed with the  
11 investigation, to relay information to the case agent.

12 Q Is that where you would stop on a case? I did a preview and  
13 I'm done?

14 A No. We do the actual analysis back at the office.

15 Q Okay. So previously you talked about what you do on an  
16 actual analysis of electronic devices. What's different about a  
17 preview?

18 A A preview is just going through the file system and trying  
19 to identify those files, either pictures or videos and identify  
20 any of those types of files that were of suspect.

21 Q Do you still use the write blocker and the forensic image  
22 and all those things?

23 A Yes.

24 We connect the hard drive, the device to a computer write  
25 blocker. We connect it to the laptop which in turn we use the

Yanez - Direct/Cayton

191

1 forensic software to do a preview of that evidence.

2 Q Now, I mean, we have several pieces of evidence that are --  
3 several pieces of electronics that were introduced into evidence  
4 here. And one of them is a laptop. Do you hook that laptop up  
5 to your other laptop, or do you take the hard drive out of that  
6 laptop?

7 A We end up taking the laptop -- the hard drive out of the  
8 laptop. And then we connect the hard drive to the evidence write  
9 blocker.

10 Q And so are some drives easier to remove from their computers  
11 than others?

12 A Yes.

13 Q So for the particular laptop in this case --

14 MR. CAYTON: May I approach the evidence, Your Honor?

15 THE COURT: Sure. Yes, sir.

16 MR. CAYTON: May I approach the witness, Your Honor?

17 THE COURT: Sure.

18 BY MR. CAYTON:

19 Q I'm showing you what's been marked as Government Exhibit 15.  
20 Do you recognize this device?

21 A Yes.

22 Q And is this one of the laptops that you forensically  
23 previewed?

24 A Forensically previewed? No. I believe it was an L1H1 was  
25 the one I previewed.

Yanez - Direct/Cayton

192

1 Q A different laptop?

2 A A different laptop, yes.

3 Q Now talking about the laptop you previewed, was it a similar  
4 type of laptop?

5 A I believe so.

6 Q And so how do you remove a hard drive from a laptop?

7 A It depends on the laptop itself. Some laptops there might  
8 be a few screws that you pull out. And the hard drive is there.  
9 And all I would need to do is just unscrew some screws from the  
10 hard drive enclosure that's holding the hard drive to the laptop.

11 Others I would have to take the whole back panel off and  
12 then get access to the hard drive. And there's some that I would  
13 need to get access through the keyboard. I would have to lift up  
14 the keyboard and then remove some screws. It would be a little  
15 more detailed as far as removing the hard drive from those.

16 Q And do you have special tools to do that with when you go on  
17 a preview?

18 A Yes.

19 We have just a variety of small size screwdriver bits,  
20 different types of screwdriver bits, phillips heads and multiple  
21 different bits for the -- Macintosh computers have different  
22 sizes or styles of bits. And then we also have tools that are we  
23 call spudgers. They're plastic and they allow us to pry open the  
24 device or the laptop or computer without making large -- or a lot  
25 of damage to the device.



Yanez - Direct/Cayton

193

1 THE COURT: Did you say Spudger?

2 THE WITNESS: Spudgers. I think that's what they call  
3 them.

4 MR. CAYTON: I learned something new today.

5 THE COURT: So did I.

6 BY MR. CAYTON:

7 Q Now why not just open up the laptop itself and look at it?

8 A Because if we turn on the laptop or make attempts to, if  
9 it's off and turn it on, we'd be turning on and be making changes  
10 to the original evidence.

11 Q And you want to make sure that before you give a full  
12 analysis, that you're still not modifying --

13 A Making any changes to time -- the timestamps.

14 Q Now you said you did a forensic preview in this case. How  
15 many devices did you preview?

16 A I believe it was just that laptop, L1H1 I believe is that  
17 one.

18 Q And did you find anything pertinent to the investigation  
19 during your preview?

20 A Yes. We found, or I found multiple, multiple files that are  
21 suspected of containing that CSAM material.

22 Q Did you open and view these files?

23 A I viewed a few.

24 Q And can you describe if you remember what you saw in those  
25 files?

Yanez - Direct/Cayton

194

1 A I do not remember the specifics of the files.

2 Q But you were convinced that there needed to be a further  
3 analysis --

4 A Yes.

5 Q -- of these devices. So you're present at the search  
6 warrant and the preview. When do you next become involved in a  
7 case?

8 A When we receive the evidence from our seized property  
9 specialist back at the office.

10 Q and was that Mr. Barkley in this case?

11 A Yes.

12 Q And approximately how many devices did Mr. Barkley bring you  
13 to do a forensic analysis on?

14 A I think there was about 50 or 60 line items. But I'd say  
15 over 30, 30 devices.

16 Q And did you do an analysis on all of the items?

17 A I attempted to do an analysis on most of the items. Some of  
18 the devices were -- I wasn't able to connect to the write  
19 blockers to be able to create an image of them. And so of all,  
20 there were gaming stations or gaming consoles that have previewed  
21 or didn't preview.

22 Q Now can that type of material be stored on a gaming device?

23 A If it has a hard drive and there's storage, it can possibly.  
24 I haven't seen anything yet to this date as far as my  
25 investigations.

Yanez - Direct/Cayton

195

1 Q So you didn't bother analyzing those because in your  
2 experience, there's not going to be anything on those?

3 A Correct.

4 Q Now of the computer devices that you analyzed, you talked  
5 about the write blocker and the software, and the forensic image.  
6 What happens when you start doing the analysis of that forensic  
7 image?

8 A I'm sorry. Can you repeat the question?

9 Q What do you do with the software once you make that forensic  
10 copy of that physical image? What does your software do?

11 A Okay. So the physical image, I add the physical image to  
12 the software.

13 And then the software starts processing the image and  
14 looking for different types of files. It does this by I believe  
15 by looking through the files and finding specific headers of the  
16 files and identifies them as either pictures, videos, text files,  
17 documents, internet evidence of that nature. So it has certain  
18 things it looks for in the image itself of the raw data, and then  
19 it'll identify and categorize those different types of files.

20 Q Can you do more specific requests when you're doing this  
21 categorization, or is that pretty much just what the computer  
22 does?

23 A Well, you can -- you can select different types of files  
24 that you're looking for just if you want to focus on ceratin  
25 things. Or you can have the software focus on everything that

Yanez - Direct/Cayton

196

1 it's capable of finding.

2 Q So when you're involved in a case like this where it's  
3 suspected child pornography, are you worried necessarily about  
4 text files?

5 A Well, I pretty much try to get as much as information as I  
6 can off of the device and then look through some of the text  
7 files and see if there's anything, for instance like passwords or  
8 login credentials or specific websites or URLs or -- URLs meaning  
9 web addresses for certain things that might be related to that  
10 type of material.

11 Q Of the amount of devices that you analyzed, can you tell the  
12 court approximately the amount of data or the size of data that  
13 you were going through?

14 A Of the devices? Total? I think it was over 30 terabytes of  
15 data.

16 Q Now can you describe a little bit for the jury and for the  
17 Court what a terabyte is?

18 A A terabyte is -- let's say for instance we have a thumb  
19 drive that's 32 gigabytes. Then from gigabytes you would go up  
20 to 1,000 gigabytes is going to be a terabyte. And then from  
21 there, you start going further and further up.

22 But let's say one -- one terabyte is found on most computers  
23 now. And like a phone, it's maybe about 256 gigabytes. So  
24 that's -- it holds a lot of data.

25 As far as number of files, it just depends because videos

Yanez - Direct/Cayton

197

1 are larger than -- than pictures. So you can hold more pictures  
2 on a terabyte than you could videos.

3 Q And you were not -- when we're talking about 30 terabytes,  
4 it sounds like a lot of data. That's about -- one terabyte is  
5 about the size on a laptop. You didn't analyze 30 different  
6 laptops.

7 A No.

8 Q So some of these were desktop computers, some of them were  
9 laptops, some of them were external drives?

10 A Yes, external drives. Some of the external drives were up  
11 to eight terabytes of storage.

12 Q So that one little drive can actually hold a lot of the  
13 storage that you were --

14 A Yes.

15 Q -- you were analyzing?

16 A Yes.

17 Q Now when you were doing your forensic analysis, did you  
18 locate any files that you believed were suspect based upon the  
19 case that you were investigating?

20 A I'm not too sure what you're trying to --

21 Q Any suspect files? Any possible child exploitative material  
22 in --

23 A Yes.

24 Q -- those files? And what types of files were these  
25 primarily?

Yanez - Direct/Cayton

198

1 A For the most part, a majority of them are pictures, picture  
2 files. And a large number were video files.

3 Q Approximately how many files in your analysis did you have  
4 that you suspected might be illegal material?

5 A I bookmarked over 100,000 files.

6 Q Now did you look through all 100,000 of those files?

7 A No.

8 Q Okay. Do you believe -- you didn't have anyone make a  
9 determination on all 100,000 files.

10 A No.

11 Q You select a small portion?

12 A Well all the files themselves, I looked -- there's  
13 thumbnails. So I would skim through the thumbnails. A majority  
14 of the videos I would check, make sure they played and just to  
15 see if the material, like, the thumbnail matched the material on  
16 the video. But no, I did not go through each and every one of  
17 them.

18 Q Now what do you do once you have carved out and discovered  
19 these files through your forensic software?

20 A So what we do, what I do is I collect the files, and then  
21 collect them and notify the case agent that we have so many  
22 files.

23 And then the case agent prepares paperwork to submit to the  
24 files to NCMEC, the National Center for Missing and Exploited  
25 Children. And NCMEC goes and reviews those files and matches

Yanez - Direct/Cayton

199

1     them up to known victims or known images that they've -- that law  
2     enforcement has seen in previous investigations.

3     Q     So you say that's what NCMEC does. Can you tell the Court a  
4     little bit what NCMEC stands for?

5     A     Oh, the National Center for Missing and Exploited Children.

6     Q     And so why would you send these files to the National Center  
7     for Missing and Exploited Children?

8     A     They built, like, a database of these types of files. And  
9     they try to identify individuals in those videos, and victims  
10    that have been identified in those videos and try to get some  
11    restitution I believe through the courts.

12    Q     Now besides files being submitted in NCMEC, what else  
13    happens to the files that you find?

14    A     So as the files that I find, I create a report and just  
15    notify the case agent of the files that we find.

16    Q     And a case agent -- who's responsible for looking at the  
17    files and determining whether or not they think they have a child  
18    pornography case on their hands?

19    A     Well I look through them. And if the case agent assists  
20    with the viewing of the files, then the case agent will look  
21    through them as well.

22    Q     Now in the present case, did you provide any files to  
23    Special Agent Ferg that you believed would be relevant to his  
24    investigation?

25    A     Yes.

Yanez - Direct/Cayton

200

1       There's a listing of files that he provided of downloaded  
2 files that were found by I believe a task force officer. And a  
3 lead was provided to him to investigate some sort of his area of  
4 responsibility. So that list, I ran a search of those file names  
5 and file folder which was one of the file folders that was in the  
6 file (indiscernible). I ran that name or that folder through the  
7 forensic software.

8       Q     So let me take a step back.

9       So Special Agent Ferg has a list of files that were  
10 downloaded. And he provides that to you to search and see if  
11 they can find any of those downloaded files on the devices that  
12 you had?

13      A     Correct.

14      Q     Is that fair? And did you search for those specific files  
15 when you were doing your search?

16      A     Yes.

17      Q     Did you find any of those files?

18      A     I did.

19      Q     How many of the files did you find?

20      A     I believe over 15, 15 files, 17 files I believe were found.

21      Q     So there were 17 files that were downloaded from an agent in  
22 Brownsville, Texas, and you found 15 of them on the devices that  
23 you analyzed?

24      A     The list, yes, that was provided to me.

25           MR. CAYTON: May I have just a moment, Your Honor?



Yanez - Direct/Cayton

201

1 THE COURT: Yes, sir.

2 BY MR. CAYTON:

3 Q Now I want to take you back to the seized property  
4 specialist brings you the physical evidence, correct?

5 A Correct.

6 Q And are they in bags kind of like what's in front of the  
7 jury here?

8 A Yes.

9 Q Like an evidence bag?

10 A Yes.

11 Q So what do you do once you get this item in this evidence  
12 bag?

13 A I identify the item, verify the bag number or the line item  
14 itself with the custody receipt, make sure we're looking at the  
15 same evidence item. And then once I verify the evidence items  
16 with the custody receipt, I take custody of the items. And then  
17 I'll go in and create an inventory of the devices.

18 Q And do you assign certain numbers or letters to these  
19 devices for your purposes?

20 A Yes. Identifiers, yes.

21 Q And how do you go about assigning identifiers?

22 A Well, like a laptop I would name them L1. And then hard  
23 drive 1, H1. If it's a desktop, I would say C1H1. If it has  
24 more than one hard drive, I would C1H1 or C1H2. Of course with  
25 the corresponding hard drives.

Yanez - Direct/Cayton

202

1 MR. CAYTON: Your Honor, I want to -- I know this is  
2 kind of tedious. But I want to go through each of the counts we  
3 have.

4 BY MR. CAYTON:

5 Q Count 2 is listing material stored on a Western Digital hard  
6 drive, model number WD800, serial number WDWCAJ92661471. Do you  
7 recognize that hard drive model?

8 A Off of the top of my head, I don't.

9 Q Is that something that you would have in your notes?

10 A Yes.

11 Q Do you have your notes with you?

12 A Yes.

13 Q Can you please review your notes and look up when you're  
14 done reviewing them? And if you'd like me to repeat the number,  
15 I'm happy to do so.

16 A Excuse me?

17 Q I'm happy to repeat the number if you'd like me to.

18 A Could you repeat it?

19 A It's serial number ending in 661471, Western Digital hard  
20 drive.

21 A Okay. Yes.

22 Q Does that hard drive ring a bell?

23 A Yes.

24 Q Is that a hard drive that you analyzed?

25 A Yes.

Yanez - Direct/Cayton

203

1 Q And what was your label for that hard drive?

2 A 661471? I labeled it a USB8.

3 Q Western Digital 661471?

4 A Oh, I'm sorry. I have these notes -- it's C1H1.

5 Q C1H1. Now what would a C1H1 be?

6 A It's a desktop computer, and it is a Western -- I'm sorry.

7 It is a -- I have other notes. Let me refer to the other notes.

8 Okay. So C1H1 is a Dell desktop computer. It is a Dimension

9 4600. And the serial number is DYHN351.

10 MR. CAYTON: Your Honor, may I approach the witness?

11 THE COURT: Sure.

12 BY MR. CAYTON:

13 Q Agent Yanez, I'm showing you what's been previously marked  
14 as Government Exhibit 9. Do you recognize this?

15 A Yes.

16 Q Is this the device that C1H1, or that Western Digital hard  
17 drive would have been removed from?

18 A Yes.

19 Q Where is the hard drive now?

20 A It is inside the device or the computer.

21 Q You put it back in after you're done with the analysis?

22 A Yes.

23 Q Can you tell us where this hard drive was manufactured?

24 A Yes. The hard drive, C1H1, was manufactured in Thailand.

25 Q In the country of Thailand?

Yanez - Direct/Cayton

204

1 A Correct.

2 Q And was that one of the devices that was seized from the  
3 defendant's house?

4 A Yes.

5 Q I'm going to go to Count 3 which is a Maxtor hard drive,  
6 Diamondmax Plus 9, serial number Yankee 45 Bravo Charlie 9 X-ray  
7 Echo. Can you tell us what your identifier was for that device?

8 A That was C2H1.

9 Q And was that also a Dell desktop computer?

10 A Correct.

11 Q And where is that hard drive right now?

12 A It's in the computer.

13 Q It's back in the computer?

14 A Correct.

15 Q And if I proffer to you that was probably Government Exhibit  
16 12 sitting in front of you, would that make sense?

17 A Yes.

18 Q On the model? Now can you tell me where this hard drive was  
19 manufactured?

20 A that hard drive, C2H1, was manufactured in the country of  
21 Singapore.

22 Q Singapore? And was this also a device that was found at the  
23 defendant's residence?

24 A Yes.

25 Q And did you do a forensic analysis on both of these devices?

Yanez - Direct/Cayton

205

1 A I did.

2 Q I'm going to go to Count 4, that's a Seagate hard drive  
3 device model ST1000LM0049, Serial number WGS5QBVZ. Can you tell  
4 us what your identifier was for that device?

5 A That is L2H1.

6 Q Would that be a laptop computer then?

7 A Correct.

8 MR. CAYTON: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. CAYTON:

11 Q I'm showing you what's been marked as Government Exhibit 15.  
12 Would this be the laptop computer?

13 A Yes.

14 Q And has the hard drive been placed back in this laptop  
15 computer?

16 A It appears so. Yes.

17 Q And for all these devices, you analyze all of them?

18 A Yes.

19 Q Okay. And can you tell me with the hard drive that's in  
20 that laptop, where that was manufactured?

21 A That laptop hard drive was manufactured in the country of  
22 China.

23 Q China. Count 5 is a Seagate hard drive device model  
24 SRDONF2, serial number NA8EYNL7. Is that a drive that you  
25 analyzed?

Yanez - Direct/Cayton

206

1 A Excuse me?

2 Q Is that one of the drives that you analyzed?

3 A Yes.

4 Q Can you tell me what your identifier was for that one?

5 A The identifier was USB3.

6 Q And was this a computer, or was this an external hard drive?

7 A It was an external hard drive.

8 Q And can you tell me where this hard drive was made?

9 A That hard drive was manufactured in the country of Thailand.

10 Q Thailand. Count 6 is a Seagate hard drive model SRDOPV1,  
11 serial number NA9QO2S9. Can you tell me what your identifier was  
12 for that drive?

13 A USB4.

14 Q And can you tell me where that drive was manufactured?

15 A The country of China.

16 Q And is that also an external hard drive?

17 A Yes.

18 Q Count 7 is a Western digital WDBYFT0040BBK-OA, serial number  
19 WX51D961NE27. Can you tell me what your identifier was for that  
20 device?

21 A That was USB5.

22 Q Can you tell me where that device was manufactured?

23 A That was manufactured in the country of Malaysia.

24 Q Malaysia?

25 A Malaysia.

Yanez - Direct/Cayton

207

1 Q Is it fair to say that most hard drives are manufactured --

2 A Outside of the U.S.

3 Q -- in Asia? Yeah. Count 8 is a Samsung hard drive serial  
4 number S267J1LZ503188. Can you tell me what your identifier was  
5 for that drive?

6 A USB8.

7 Q And can you tell me where that device was manufactured?

8 A The country of Korea.

9 Q And finally Count 9 is a SimpleTech hard drive device model  
10 963004100168, serial number 09335092000206005. Is that a device  
11 that you analyzed?

12 A Yes.

13 Q Can you tell me what your identifier was for that device?

14 A USB12.

15 Q Can you tell me where that device was manufactured?

16 A The country of China.

17 Q And that was also an external drive.

18 A Correct.

19 Q So the first three were computers, and all the others were  
20 external drives?

21 A Yes.

22 Q Is there anything different you do in an analysis of an  
23 external drive versus a working computer?

24 A No. We would still hook it up to an external -- I mean to  
25 the write blocker and get an image of that device.

Yanez - Direct/Cayton

208

1 Q Knowing that all these drives were made in Asia, did these  
2 devices that were being used necessarily have to be involved in  
3 interstate commerce?

4 A Excuse me, can you repeat the question?

5 Q Did these devices have to enter interstate commerce in order  
6 to be sold in the United States?

7 A Yes.

8 MR. CAYTON: Your Honor, may I approach the witness?

9 THE COURT: Yes, sir.

10 BY MR. CAYTON:

11 Q Agent Yanez, I'm showing you what's been marked as  
12 Government's 41 for identification. Do you recognize that?

13 A I do.

14 Q And what is that?

15 A This is a disc, a CD disc that contains files, videos of  
16 suspected CSAM material.

17 Q And how do you know that's what that is?

18 A Because I reviewed it.

19 Q And did you provide those videos to --

20 A Yes, I did provide those videos to yourself and to Special  
21 Agent Ferg.

22 Q And did you make any markings on that disc to confirm that  
23 that was the disc you reviewed?

24 A Yes. I provided my initials.

25 Q Now the file that are on this disc, where did they come



Yanez - Direct/Cayton

209

1 from?

2 A They came from the devices that we just talked about.

3 Q How many videos, or how many files are on the discs?

4 A Files that are on the disc? About seven or eight files.

5 Q Is there a video for each device that you -- or a video or  
6 image for each device that you analyzed and that's present here  
7 today?

8 A Yes.

9 MR. CAYTON: Your Honor, at this time, the Government  
10 would offer Government Exhibit 41 into evidence.

11 THE COURT: Mr. Gorman?

12 MR. GORMAN: Your Honor, subject to the previous  
13 objections on the topic, no additional objections, Your Honor.

14 THE COURT: Government's Exhibit 41 is admitted over  
15 objection as previously stated.

16 (Government's Exhibit 41 admitted into evidence)

17 MR. CAYTON: Your Honor, at this point I would like to  
18 publish the exhibit to the jury.

19 THE COURT: Go right ahead.

20 MR. CAYTON: And, Your Honor, for the record, the  
21 Government intends on showing only a four-second clip of any of  
22 the videos.

23 THE COURT: Okay. Very good. So be watching a four-  
24 second clip of each, or any of them?

25 MR. CAYTON: Yes. Any of them in their --

Yanez - Direct/Cayton

210

1 THE COURT: So playing a series of four-second or  
2 fewer, or less clips?

3 MR. CAYTON: Yes, Your Honor.

4 THE COURT: Okay.

5 BY MR. CAYTON:

6 Q Agent Yanez, I want to start off with a file named boy 05.  
7 Does that file ring a bell for you?

8 A Yes.

9 Q Do you know what device that file was found on?

10 A May I refer to my notes?

11 MR. CAYTON: With the Court's permission to refresh  
12 your recollection.

13 THE COURT: Sir.

14 (Pause)

15 BY MR. CAYTON:

16 Q Did reviewing your notes -- excuse me, reviewing your notes  
17 refresh your recollection?

18 A Yes.

19 Q What device was boy 05 found on?

20 A Laptop 2, hard drive 1.

21 Q And is this also one of the images or videos that was  
22 downloaded originally from the defendant's computer by the  
23 Brownsville agent?

24 A Yes.

25 MR. CAYTON: And, Your Honor, I apologize. Just a few

Yanez - Direct/Cayton

211

1 technical difficulties to make sure we're queuing up for only  
2 four seconds.

3 (Pause)

4 MR. CAYTON: You can stop it there.

5 BY MR. CAYTON:

6 Q Is that the video boy 05?

7 A Yes.

8 Q And that was found on L2 --

9 A H1.

10 Q -- H1, the laptop?

11 A Yes.

12 Q There's a video titled 4YOPTHCR@Ygoldreel with three  
13 exclamation points. Do you recognize that video title?

14 A Yes.

15 Q And what drive was that video found on?

16 A On C1H1.

17 (Pause)

18 BY MR. CAYTON:

19 Q While that's queuing up, you said you recoginzed this file  
20 from C1H1, the desktop hard drive?

21 A Yes.

22 Q And when you're doing your analysis, are you just looking  
23 for videos, or are you looking for the data that goes along with  
24 those videos or images, as well?

25 A As far as can you explain --

Yanez - Direct/Cayton

212

1 Q Like a created date, where the file location is, modified,  
2 things like that.

3 A For the most part, we look for the location.

4 Q And --

5 A Or I look for the location.

6 Q And can you tell me where in C1H1 that the file name 4YOPTHC  
7 ray gold reel (phonetic) was located?

8 A I do not have that -- the notes. I can't tell you off the  
9 top of my head.

10 Q Would reviewing the notes that you've provided refresh your  
11 recollection?

12 A Yes.

13 MR. CAYTON: May I approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 THE WITNESS: So for C1H1, 4YOPTHC ray gold reel, that  
16 one was located in file path of C1H1 under the documents and  
17 settings folder, under the owner by DYHN351 folder which is also  
18 underneath that is the my documents folder. And under that  
19 folder is my videos folder. And within that folder is child porn  
20 folder. And then within that folder is videos folder.

21 BY MR. CAYTON:

22 Q Now in your experience as a computer forensics analyst or  
23 agent, are you experienced with standard file folders that are  
24 created through windows or other operating systems?

25 A Yes.

Yanez - Direct/Cayton

213

1 Q In a standard my documents and my videos folder on a Windows  
2 desktop, is there a child porn folder that is a default folder  
3 that's made?

4 A No.

5 Q How would a folder titled child porn be created on an  
6 operating system?

7 A The user of the device creates that folder at that location.

8 Q And we're now going to play a short, four-second clip from  
9 that video. And I ask you to watch it, and I'll ask you some  
10 more questions afterwards. Or maybe not.

11 THE COURT: And when this finally plays, it's going to  
12 play on both screens, right?

13 MR. CAYTON: It should, Your Honor. Yes.

14 THE COURT: It will be either one. Okay.

15 (Video plays at 5:12 p.m.)

16 MR. CAYTON: And we can move on to the next one.  
17 That's fine.

18 BY MR. CAYTON:

19 Q For Count 3, or there's a file listed on the disc that's  
20 titled king pass new, exclamation point, 022 Asian, dash PTHC,  
21 parentheses tied eight-year-old Cambodian boom-boom, end  
22 parentheses, girl fucked in RA. Is that a file that you  
23 recognize from the hard drives?

24 A Yes.

25 Q Can you tell me what hard drive that file was found on?

Yanez - Direct/Cayton

214

1 A That is on C2H2.

2 Q And that was the other desktop computer?

3 A Yes. I'm sorry, correction. It was C2H1.

4 Q C2H1.

5 A Correct.

6 Q And going back to that prior file, the four-year-old PTHC re  
7 gold reel, can you tell me the last date that that file was  
8 accessed?

9 A The last access date was March 13th, 2012.

10 Q Now for this king pass new file, would you be able to tell  
11 me the file path for that file?

12 A With the notes, I can't off the top of my head.

13 MR. CAYTON: May I approach the witness again, Your  
14 Honor?

15 THE COURT: Yes, sir.

16 BY MR. CAYTON:

17 Q Can you tell me when the king pass new, or the file location  
18 for the king pass new file?

19 A So the file location for the king pass new was in C2H1.  
20 It's under documents and settings. In that folder is Thomas'  
21 folder, Thomas folder. Underneath that folder is desktop folder.  
22 And then within that folder is shredd spelled S-H-R-E-D-D,  
23 exclamation point. And then underneath that folder is another  
24 folder with letters CWVCS. And then this is the file.

25 Q Did you view this file?

Yanez - Direct/Cayton

215

1 A Yes.

2 Q Can you tell me the last date that this file was accessed?

3 A Last access date was January 14th, 2012.

4 Q But to be clear, even though the last access date was from  
5 2012, that computer was seized from the location and that file  
6 was still on the computer when you analyzed it?

7 A Yes.

8 Q And I'll direct your attention to a file boy 06. Can you  
9 tell me which drive or which device that file was found on?

10 A Boy 06 was found on laptop two, hard drive one.

11 Q And did you view this file?

12 A I did.

13 Q Can you tell me the file path for this file?

14 A File path for this file is Windows, users, Thomas,  
15 downloads, BitTorrenting, complete. And those are all folder  
16 names in that file path.

17 Q Is that a default folder on Windows?

18 A A default folder? The downloads folder is a default folder.

19 Q The BitTorrenting subfolder, is that something that would be  
20 created by BitTorrent software, or is that something that someone  
21 would create?

22 A I think that's a folder that someone would create.

23 Q Okay. And you have experience analyzing different computers  
24 that have used peer-to-peer software?

25 A Correct.

Yanez - Direct/Cayton

216

1 Q Have you ever seen that folder that's created by the  
2 software itself?

3 A Not in the downloads folder.

4 Q and when was the last date that that file, boy 06, was  
5 accessed?

6 A Last access date was 10/1/2019, October 1st, 2019.

7 Q When was it created?

8 A Created date was 9/10/2019. September 10th.

9 Q And I'm going to take you back to the prior video, the king  
10 pass video. You said that was found on the second desktop?

11 A Yes.

12 (Video plays at 5:16 p.m.)

13 MR. CAYTON: And you can stop it there.

14 BY MR. CAYTON:

15 Q Is that the file that you know to be the king pass file?

16 A Yes.

17 Q And you viewed that file prior to testifying today?

18 A Yes.

19 Q And you found that file on the defendant's computer on the  
20 C2H1 computer?

21 A Yes.

22 Q And that would be the Maxtor hard drive in Count 3?

23 A Yes.

24 Q I want to direct your attention to a file titled dad on  
25 daughter full penetration sex. Can you tell me which device that



1 file was found on?

2 A It was on USB3.

3 Q And just for clarification sake, USB3 is Count 5. That's  
4 the Seagate hard drive?

5 A Yes.

6 Q Can you tell me when -- or what the file path was for this?

7 A The file path is BitTorrenting folder, completed tech savvy  
8 torrents folder, PTHCTIEM folder.

9 Q Now the prior three files we talked about, they came off  
10 computers themselves, correct?

11 A Correct.

12 Q This one's off an external hard drive.

13 A Yes.

14 Q To get a file from a computer to an external hard drive,  
15 does there have to be user manipulation?

16 A Yes.

17 Q Specifically how are the different ways a user could get a  
18 file off a computer onto an external hard drive?

19 A They can cut and paste it, or select it by right-clicking on  
20 the file or folder, right clicking and selecting copy, and then  
21 copy it, move it over to the other -- other computer or other  
22 hard drive, the USB, and selecting a location and right-clicking  
23 and pasting. They could cut it and paste it. Or they can select  
24 the file and then drag it over to the other location.

25 Q If someone plugged in a USB hard drive onto a computer,

Yanez - Direct/Cayton

218

1 could they set up files to automatically dump into that hard  
2 drive?

3 A Yes.

4 Q Would -- if files were set to dump to a particular hard  
5 drive, for example this external, the file path you read off that  
6 had completed tech savvy downloads, PTHC, who would create that  
7 file path?

8 A The user would create it.

9 Q Do you know what PTHC stands for?

10 A Yes.

11 Q What does PTHC stand for?

12 A Preteen hardcore.

13 Q Is that a common title that you see when you're doing child  
14 pornography investigations?

15 A Yes.

16 Q I'll go on to the next file. That would be title  
17 parentheses PTHC, end parentheses, tara brand new, parentheses,  
18 two, end parentheses. Does that file -- do you recognize that  
19 file name?

20 A Yes.

21 Q What device was that file found on?

22 A USB4.

23 Q And that would be the Seagate hard drive, serial number  
24 NA9Q02S9 in Count 6?

25 A Yes.

Yanez - Direct/Cayton

219

1 Q Did you view this file?

2 A I did.

3 Q Can you tell me what the file path was for this file?

4 A It was new folder, PTHC folder.

5 Q That's it?

6 A Yes.

7 Q And so that would be found on the external hard drive that's  
8 USB4?

9 A Yes.

10 Q And how would that folder or that file path have been  
11 created?

12 A Either by the user.

13 Q When was the last time that file was accessed?

14 A It was accessed August 2nd, 2018.

15 (Counsel confer)

16 MR. CAYTON: I'm going to show you a short clip from  
17 the dad on daughter video which I believe came from USB3  
18 previously testified to.

19 THE COURT: And this goes to Count 4?

20 MR. CAYTON: This goes to Count 5, Your Honor.

21 THE COURT: 5.

22 MR. CAYTON: Yes.

23 (Pause)

24 MR. CAYTON: That's probably better. I'll move on a  
25 little bit further while we're loading that up. File titled Ulia

Yanez - Direct/Cayton

220

1 -- oh there we go.

2 (Video plays at 5:22 p.m.)

3 THE COURT: Off. Off. Off.

4 MR. CAYTON: Just turn it off. That's enough.

5 THE COURT: Turn it off.

6 BY MR. CAYTON:

7 Q There's a file titled Ulia 2-7. Do you recognize that file  
8 name?

9 A Yes.

10 Q And can you tell me what device that file was found on?

11 A USB5.

12 Q And that would be Count 7, a Western Digital hard drive,  
13 serial number ending in 961NE27?

14 A Yes.

15 Q Did you view this video?

16 A Yes.

17 Q Can you tell me what the file path was for this video?

18 A File path is my hard drive -- hard drive backups folder, my  
19 hard drives folder from current laptop hard drive, PC8YPDHL1  
20 folder, users folder, other folder, appdata folder, local folder,  
21 delete folder, freenet folder, downloads folder, XLOLA-  
22 ULIA(2).rar.

23 Q Can you tell me when the last time that file was accessed?

24 A Last time the file was accessed is 1/1/0001.

25 Q Now obviously this file was not last accessed on January 1st

Yanez - Direct/Cayton

221

1 of 0001.

2 A Correct.

3 Q Why the date range that way?

4 A I'm not sure. I'm not sure why the date ended up like that.

5 Q Is it possible a file system may be corrupted and may modify  
6 those dates?

7 A Possibly.

8 Q But you were able to view that file on the forensic image  
9 that you created from that device?

10 A Yes.

11 Q Moving on to Count 8, a picture, a jpeg image that's titled  
12 \$RLISUOD, do you recognize that image?

13 A Yes.

14 Q And that image was found on the Samsung hard drive, serial  
15 number ending in 503188?

16 A Yes.

17 Q And what was your USB title for that?

18 A USB8.

19 Q And this is just a still image.

20 A Correct.

21 Q And do you remember -- did you look at this image prior to  
22 testifying in court today?

23 A Yes.

24 Q And did you pull this image off the drive when you were  
25 doing your analysis of the drive?

Yanez - Direct/Cayton

222

1 A Yes.

2 Q Do you remember what this still image is?

3 A Of a nude prepubescent female.

4 Q And we'll move onto USB12, a file titled PTHC, three  
5 exclamation points, new0604, three exclamation points,  
6 11lilly3y01 -- or parentheses 1, end parentheses. Can you tell  
7 me which device this was found on?

8 A USB12.

9 Q Can you tell me what the file path was for this video?

10 A This one had three file paths. It was the first one is  
11 Thomas' stuff folder, BitTorrent downloads folder, web video  
12 collection folder, (PTHC)!!!new0604!!!loveandlily3YO(1).avi is  
13 the file name.

14 Q You said it was -- there's three different file paths. Does  
15 that mean there's three different copies on the same drive?

16 A Correct.

17 Q Does the computer automatically make multiple copies of an  
18 image or a video?

19 A A user could copy the file.

20 Q Can you tell me when this file was last accessed?

21 A The file, first file was last accessed on June 26, 2011.

22 Q Did you view this file before testifying today?

23 A Yes.

24 Q It says 3YO in the video title. Can you tell us why?

25 A That stands for -- I've known that to stand for three-year-

Yanez - Direct/Cayton

223

1 old.

2 Q Do you remember viewing this video and what it depicts?

3 A I do not remember specifically what it depicted.

4 Q There's also two more videos on the disc. Is that correct?

5 A Correct.

6 Q And one of those videos is entitled awesome preteen  
7 compilation 2, and the second one is entitled PTHC Kelly 8YO -  
8 sucking and trying to F. Why -- where did those videos come  
9 from?

10 A The first video, awesome preteen compilation, came from USB3  
11 and USB12. And the second video, PTHC Kelly 8YO came from C2H1,  
12 USB 3, and USB12.

13 Q USB3 is Count 5, the Seagate ending in EYNL7. And USB12 is  
14 the SimpleTech hard drive ending in 206005?

15 A Yes.

16 Q So there was -- you found multiple copies of these two  
17 videos?

18 A Yes.

19 Q And what is the significance of these two videos?

20 A They were videos provided -- we were notified by NCMEC that  
21 these videos had identified victims associated with them.

22 Q and just to be clear, for all of the videos and images that  
23 we had just gone through and described that are on that disc, you  
24 viewed them all?

25 A Yes.

1 Q And each of them came off the drives as you described?

2 A Yes.

3 THE COURT: Mr. Cayton?

4 MR. CAYTON: Yes, Your Honor.

5 THE COURT: Let's break for the evening.

6 MR. CAYTON: Yes, Your Honor.

7 THE COURT: So remember where you are, okay? I'm  
8 cutting you off at a bad time.

9 MR. CAYTON: It's fine, Your Honor.

10 THE COURT: It should be good, right?

11 MR. CAYTON: Yes, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen of the jury, I  
13 want you to leave your notebooks here. You're going to leave your  
14 badges here. You can leave them here or in the jury room.  
15 Anything in the jury room will be secure. Pocketbooks, wallets,  
16 cash, anything you want to leave will be fine. It also will be.

17 Before we recess for the night, I remind you again that  
18 you must decide this case based solely on the evidence presented  
19 here within the four walls of this courtroom. That means you  
20 must not discuss the case in any manner among yourselves or with  
21 anyone else until you retire to deliberate.

22 You may inform your family, friends, and employer that  
23 you're serving jury duty. You must not go into any details of  
24 the case. Do not conduct any independent research into the case  
25 or the people involved. In addition, avoid reading any articles



1 or watching or listening to any local broadcasts in the event the  
2 case may be mentioned.

3 You're not to have any conversation whatsoever with the  
4 lawyers or other persons connected with the case. Again, the  
5 reason for these cautions lies in the fact that it will be your  
6 duty to decide this case solely on the basis of the testimony and  
7 evidence presented at jury trial without consideration of any  
8 other matters whatsoever.

9 Here's the deal I will make you. I'm going to have the  
10 lawyers, I'm going to keep the lawyers while you leave because we  
11 got other work to do that we can do outside of your presence.  
12 I'm also going to have them come back in before y'all come in in  
13 the morning. So we'll be here no later than 8:00 a.m. You all  
14 be here no later than 8:30.

15 And here's the deal I'll make you. Once we have all 14  
16 of you, any time after eight, we're going to start. Okay? So I  
17 had one jury come in at ten after eight and we started. I had  
18 another jury come in at five after eight. Those are the two so  
19 far. Everybody else has gone right up to the wire and we started  
20 at 8:30. Doesn't matter to me.

21 We're going to start no later than 8:30. We've got to  
22 have all of you to start. But if you get here earlier and ready,  
23 we'll start earlier than that. We'll start between eight -- we  
24 won't start earlier than eight. So don't break your neck getting  
25 here earlier than eight.

1           You can get here, though, as early as 7:30, I think. I  
2 think the building's open at 7:30. You're welcome to bring  
3 coffee. We'll have those snacks. You can tell there's nothing  
4 great in there, but it's okay. It's up to you.

5           We'll probably have some coffee made also, but you're  
6 welcome to bring your own. Who's making the coffee, do you know?

7           UNIDENTIFIED SPEAKER: Not me, sir.

8           THE COURT: Not you? Okay. If I know who it is, I'll  
9 tell you whether to make your own -- bring your own or not. But  
10 I don't know who it is, so you're taking your life into your own  
11 hands. It will be good I bet.

12           With that, have a great evening. We'll see you in the  
13 morning. Remember your instructions. Let's rise for the jury,  
14 please.

15           (Jury out at 5:31 p.m.)

16           THE COURT: Let's be seated, please. Outside the  
17 presence of the jury. Mr. Greenbaum, Mr. Cayton, anything more  
18 you'd like to take up today outside the presence?

19           MR. CAYTON: Your Honor, I just wanted to apologize to  
20 the Court. I got carried away reading a file name and I dropped  
21 the F-bomb, and I apologize.

22           THE COURT: I think you're supposed to. I think you  
23 have to. That's the way I always do it. You're not supposed to  
24 curse on your own, which Mr. Weber liked to do.

25           MR. CAYTON: I've heard stories, Your Honor.

1 THE COURT: But I think something like that, you know,  
2 the way I was trained 30-something years ago is you have to do it  
3 in instances like that. So no apologies necessary.

4 Anything --

5 UNIDENTIFIED SPEAKER: Sorry it wasn't working.

6 THE COURT: I'm sorry?

7 UNIDENTIFIED SPEAKER: I'm sorry it wasn't working.

8 THE COURT: I know. That's going to be cantankerous.  
9 And wouldn't you know it will be -- because we probably could  
10 have gotten through those and been done with them. I don't know.  
11 But work on that tonight obviously. You've got nothing else to  
12 do, right? You were going to sleep. You were going to sleep.

13 MR. CAYTON: Type of material you want to work on.

14 THE COURT: So, Mr. Gorman, Ms. Battaller, anything  
15 you'd like to take up outside the presence?

16 MS. BATALLER-SCHNEIDER: No, Your Honor.

17 THE COURT: All right.

18 MS. BATALLER-SCHNEIDER: Thank you.

19 THE COURT: I hope y'all get some rest, everybody. And  
20 we'll be here no later than eight o'clock.

21 If you think of something tonight, all of you, if you  
22 think of something tonight that you're like you know what, when  
23 we get here at eight we need to take this up, email Ms. Salas.  
24 Copy each other so that we all know. And she'll tell me ahead of  
25 time okay, we're going to take this up.

1 And we'll know because if they get here at 8:05 or  
2 8:10, I'm going to feel horrible if we have something to take up  
3 outside the presence and they have to wait in there. They'll  
4 just keep drinking coffee and have to go to the bathroom early.  
5 It's going to be a mess.

6 All right. We'll get Mr. Perkins some rest and some  
7 grub, and I'll see y'all in the morning. Thank you, all.

8 (Proceedings adjourned at 5:34 p.m.)

9 ---000---

10  
11 **C E R T I F I C A T E**

12 I, DIPTI PATEL, court-approved transcriber, certify that  
13 the foregoing is a correct transcript from the official  
14 electronic sound recording of the proceedings in the above-  
15 entitled matter.

16  
17 

18  
19 \_\_\_\_\_  
20 DIPTI PATEL, CET-997

21 LIBERTY TRANSCRIPTS

22 Date: January 3, 2023